

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES STEEL PRODUCTS COMPANY,
a corporation,

Plaintiff in Error,

v.s.

POOLE-DEAN COMPANY, a corporation,

Defendant in Error.

TRANSCRIPT OF RECORD ON WRIT OF ERROR

To the District Court of the United States for the District of Oregon

Filed

FEB 9 - 1917

F. D. Monckton,

Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES STEEL PRODUCTS COMPANY,
a corporation,
Plaintiff in Error,

vs.

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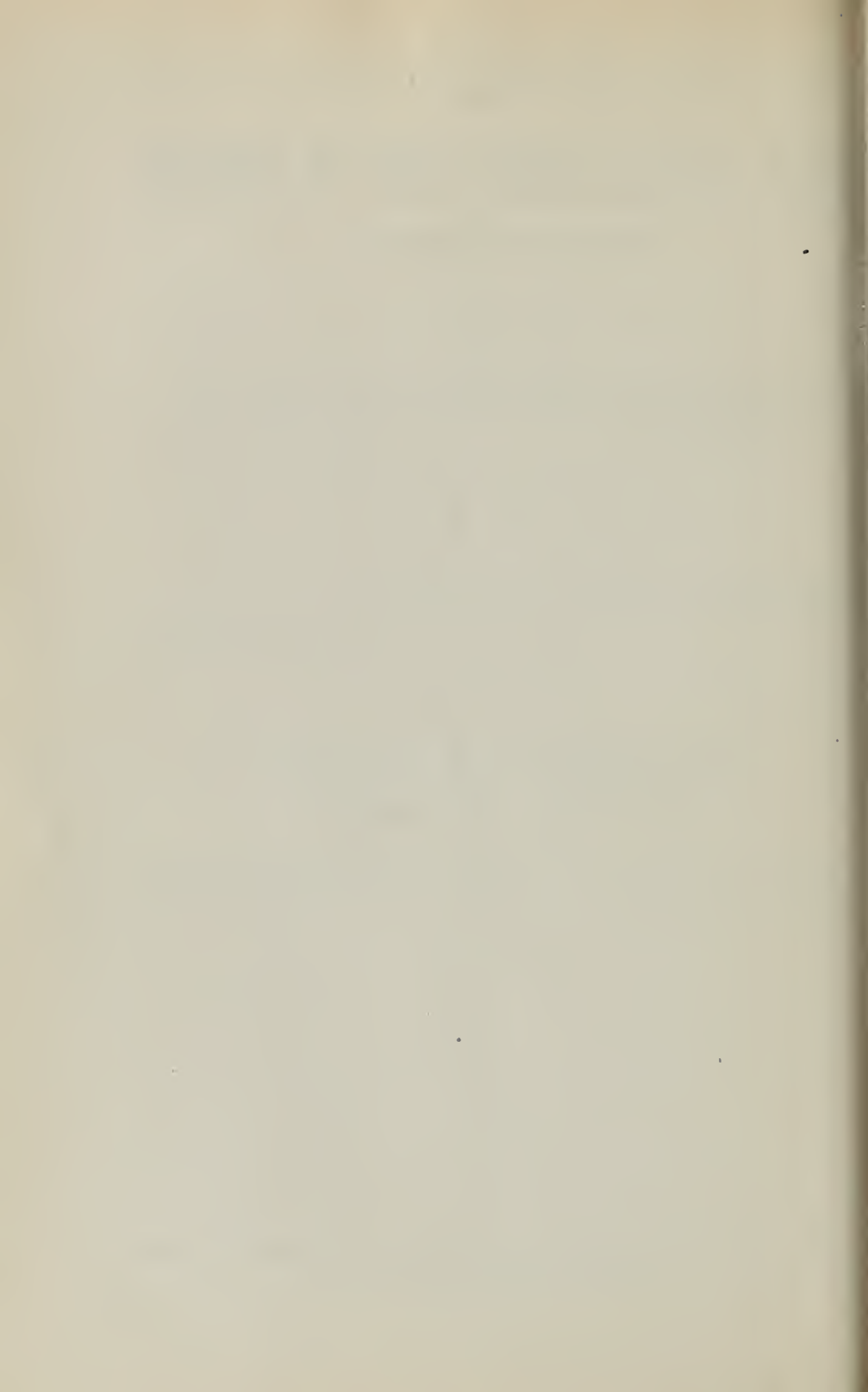


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*United States Circuit Court of Appeals for the
Ninth Circuit.*

UNITED STATES STEEL PRODUCTS COM-
PANY, a corporation,

Plaintiff in Error,

vs.

POOLE-DEAN COMPANY, a corporation,

Defendant in Error.

NAMES AND ADDRESSES OF ATTORNEYS OF RECORD :

TEAL, MINOR & WINFREE and
ROGERS MAC VEAGH,
Spalding Building, Portland, Oregon,
For the Plaintiff in Error.

McDOUGAL & McDOUGAL,
Northwestern Bank Building, Portland, Oregon,
For the Defendant in Error.

*United States Circuit Court of Appeals for the
Ninth Circuit.*

UNITED STATES STEEL PRODUCTS COM-
PANY, a corporation,

Plaintiff in Error,

vs.

POOLE-DEAN COMPANY, a corporation,

Defendant in Error.

Citation on Writ of Error

UNITED STATES OF AMERICA,
District of Oregon,—ss.

To Poole-Dean Company, a corporation,
Greeting:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Oregon, wherein United States Steel Products Company, a corporation, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said Dis-

(Citation on Writ of Error.)

trict, this 3rd day of January, in the year of our
Lord, one thousand, nine hundred and seventeen.

CHAS. E. WOLVERTON,
Judge.

Filed January 3, 1917. G. H. Marsh, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

UNITED STATES STEEL PRODUCTS COM-
PANY, a corporation,

Plaintiff in Error,

vs.

POOLE-DEAN COMPANY, a corporation,

Defendant in Error.

Writ of Error

THE UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES OF
AMERICA.

To the Judge of the District Court of the United
States for the District of Oregon—Greeting:

Because in the records and proceedings, as also
in the rendition of the judgment of a plea which is
in the District Court before the Honorable Charles
E. Wolverton, one of you, between Poole-Dean Com-
pany, a corporation, plaintiff and defendant in error,
and United States Steel Products Company, a cor-
poration, defendant and plaintiff in error, a mani-
fest error hath happened to the great damage of the
said plaintiff in error, as by complaint doth appear;
and we, being willing that error, if any hath been,
should be duly corrected, and full and speedy justice
done to the parties aforesaid, and, in this behalf, do
command you, if judgment be therein given, that

(Writ of Error.)

then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at San Francisco, California, within thirty days from the date hereof, in the said Circuit Court of Appeals to be then and there held; that the record and proceedings aforesaid, being then and there inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States, this 3rd day of January, 1917.

(Seal)

G. H. MARSH,

Clerk of the District Court of the United
States for the District of Oregon.

Filed January 3, 1917. G. H. Marsh, Clerk.

Service of the foregoing Writ of Error made this 3rd day of January, 1917, upon the District Court of the United States for the District of Oregon, by filing with me as Clerk of said Court, a duly certified copy of said Writ of Error.

G. H. MARSH,

Clerk, United States District Court,
District of Oregon.

*In the District Court of the United States for the
District of Oregon.*

March Term, 1916.

Be it Remembered, That on the 19th day of September, 1916, there was duly filed in the District Court of the United States for the District of Oregon, an Amended Complaint, which had been duly served upon the defendant named therein, now the plaintiff in error, on the 22nd day of April, 1916, but not filed until the said 19th day of September, 1916, in words and figures as follows, to-wit:

*In the District Court of the United States for the
District of Oregon.*

POOLE-DEAN COMPANY, a corporation,

Plaintiff,

vs.

UNITED STATES STEEL PRODUCTS COM-
PANY, a corporation,

Defendant.

Amended Complaint

Plaintiff complains and for cause of action alleges:

I.

That it is a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of Oregon, with its principal place of business at Portland, Multnomah County, Oregon,

(Amended Complaint.)

and that at the times hereinafter mentioned it was a corporation duly authorized to transact business in the Province of British Columbia, Canada, with its principal place of business at Prince Rupert, British Columbia, all in accordance with the Foreign Companies Act of the Dominion of Canada.

II.

That the defendant is a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of New Jersey, and duly authorized to transact business as a foreign corporation within the State of Oregon.

III.

That on or about September, 1912, plaintiff entered into a contract with the defendant to furnish the labor and equipment to erect, rivet and paint the structural steel to be used in the machine shop, boiler shop, power house and other buildings of the Grand Trunk Pacific Company, at Prince Rupert, British Columbia, at an agreed price of \$18.00 per ton of 2000 pounds, said agreement providing that the steel should be fabricated at the factory and delivered to the plaintiff for erection upon the premises of the Grand Trunk Pacific Company at Prince Rupert, British Columbia, where said erection was to be performed.

IV.

That at the time said contract was entered into

(Amended Complaint.)

the agreed price of \$18.00 per ton of 2000 pounds was based upon the understanding that the steel for said terminal buildings would be delivered completely fabricated and that if extra work was necessary, other than for the erection of said steel, plaintiff would be allowed a reasonable amount for such extra work.

V.

That thereafter, when the erecting plans were received plaintiff and defendant discovered that the steel shipped from said plants would not be received at Prince Rupert completely fabricated as previously understood by plaintiff and defendant and plaintiff thereupon notified defendant that plaintiff would charge defendant for the extra work required in fabricating said steel and defendant, through its agent, Overmeier, promised, and agreed that said matter would be satisfactorily adjusted between plaintiff and defendant and instructed plaintiff to proceed with the work of said buildings.

VI.

That thereupon and pursuant to said agreement between plaintiff and defendant, plaintiff fabricated and assembled the steel for the cold storage building, at an actual and reasonable expense of \$166.95; for the ship shed at the actual and reasonable expense of \$1896.16; for the blacksmith, machine and boiler shop, at the actual and reasonable expense of \$479.00; for the power house at the actual and rea-

(Amended Complaint.)

sonable expense of \$207.39; for the foundry building the actual and reasonable expense of \$481.14, making a total actual and reasonable expense of \$3330.69.

VII.

That plaintiff has demanded that defendant pay said \$3330.69 which is long past due but the defendant has refused and now refuses to pay the same, or any part thereof.

And plaintiff, for a second cause of action, alleges:

I.

That plaintiff is a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of Oregon, with its principal place of business at Portland, Multnomah County, Oregon, and that at the times hereinafter mentioned it was a corporation duly authorized to transact business in the Province of British Columbia, Canada, with its principal place of business at Prince Rupert, British Columbia, all in accordance with the Foreign Companies Act of the Dominion of Canada.

II.

That the defendant is a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of New Jersey, and duly authorized to transact business as a foreign corporation within the State of Oregon.

(Amended Complaint.)

III.

That heretofore and on or about September, 1912, plaintiff and defendant entered into a contract to furnish all necessary material and equipment to erect the structural steel to be used in the dry docks being constructed by the Grand Trunk Pacific Company at Prince Rupert, British Columbia, for the sum of \$18.00 per ton of 2000 pounds, the erecting to begin when three pontoons had been floated in said dry docks and that at the time such contract was entered into plaintiff and defendant went over the ground and it was understood and agreed that defendant would not order plaintiff to begin work on the job until such time as plaintiff could, when starting the building, for said Grand Trunk Pacific Company, continuously keep at the work until the completion of the job and that in the event that there were any delays to plaintiff in said work that the defendant would reimburse plaintiff for such delays and it was further understood and agreed that defendant would furnish plaintiff with adequate space for the purpose of assorting and handling the structural steel when it was unloaded on the dock of the Grand Trunk Pacific Company; that plaintiff was thereafter instructed by defendant to commence work and plaintiff did commence work upon the buildings and completed the same before three pontoons of the dry docks had been floated and because of the premature instructions of the defendant and

(Amended Complaint.)

the delays in the completing of said pontoons, plaintiff's equipment was compelled to lie idle and remain in disuse for a period of time extending from September 1st, 1914 to November 5th, 1914, and that the reasonable rental of said equipment for said period of time was \$2123.64.

IV.

That plaintiff, on account of the premature instructions of defendant to begin work before the completion of said pontoons, as above set forth, has been damaged in the sum of \$2123.64 which sum is owing plaintiff, is long past due and which sum plaintiff has demanded of defendant and defendant has refused and continues in its refusal to make said payment.

And plaintiff, for a third cause of action, alleges:

I.

That plaintiff is a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of Oregon, with its principal place of business in Portland, Multnomah County, Oregon, and that at the times hereinafter mentioned it was a corporation duly authorized to transact business in the Province of British Columbia, Canada, with its principal place of business at Prince Rupert, British Columbia, all in accordance with the Foreign Companies Act of the Dominion of Canada.

(Amended Complaint.)

II.

That the defendant is a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of New Jersey, and duly authorized to transact business as a foreign corporation within the State of Oregon.

III.

That heretofore and on or about September, 1912, plaintiff and defendant entered into a contract to furnish all necessary material and equipment to erect the structural steel to be used in the dry docks being constructed by the Grand Trunk Pacific Company at Prince Rupert, British Columbia, for the sum of \$18.00 per ton of 2000 pounds, the erecting to begin when three pontoons had been floated in said dry docks and that at the time such contract was entered into plaintiff and defendant went over the ground and it was understood and agreed that defendant would not order plaintiff to begin work on the job until such time as plaintiff could, when starting the building, for said Grand Trunk Pacific Company, continuously keep at the work until the completion of the job and that in the event that there were any delays to plaintiff in said work that the defendant would reimburse plaintiff for such delays and it was further understood and agreed that defendant would furnish plaintiff with adequate space for the purpose of assorting and handling the struc-

(Amended Complaint.)

tural steel when it was unloaded on the dock of the Grand Trunk Pacific Company; that plaintiff was thereafter instructed by defendant to commence work and plaintiff did commence work upon the buildings and completed the same before three pontoons of the dry docks had been floated and because of the premature instructions of the defendant and the delays in the completing of said pontoons, plaintiff's equipment was compelled to lie idle and remain in disuse for a period of time extending from September 1st, 1914, to November 5th, 1914, making it necessary for plaintiff to return the laborers who were employed upon the work at Prince Rupert, British Columbia, to Vancouver, British Columbia, and pay the railroad expenses and wages of said men while in transit to Vancouver, British Columbia, at a cost of \$918.00.

IV.

That plaintiff, on account of the premature instructions to begin work, as above stated, has been damaged in the sum of \$918.00 which sum is now owing plaintiff and long past due and for which amount plaintiff has demanded payment and defendant has refused and now refuses payment of the same.

And plaintiff, for a fourth cause of action, alleges:

(Amended Complaint.)

I.

That plaintiff is a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of Oregon, with its principal place of business at Portland, Multnomah County, Oregon, and that at the time hereinafter mentioned it was a corporation duly authorized to transact business in the Province of British Columbia, Canada, with its principal place of business at Prince Rupert, British Columbia, all in accordance with the Foreign Companies Act of the Dominion of Canada.

II.

That the defendant is a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of New Jersey, and duly authorized to transact business as a foreign corporation within the State of Oregon.

III.

That heretofore and on or about September, 1912, plaintiff and defendant entered into a contract to furnish all necessary material and equipment to erect the structural steel to be used in the dry docks being constructed by the Grand Trunk Pacific Company at Prince Rupert, British Columbia, for the sum of \$18.00 per ton of 2000 pounds, the erecting to begin when three pontoons had been floated in said dry docks and that at the time such contract was

(Amended Complaint.)

entered into plaintiff and defendant went over the ground and it was understood and agreed that defendant would not order plaintiff to begin work on the job until such time as plaintiff could, when starting the building for said Grand Trunk Pacific Company, continuously keep at the work until the completion of the job and that in the event that there were any delays to plaintiff in said work the defendant would reimburse plaintiff for such delays and it was further understood and agreed that defendant would furnish plaintiff with adequate space for the purpose of assorting and handling the structural steel when it was unloaded on the dock of the Grand Trunk Pacific Company.

IV.

That defendant disregarded said understanding and agreement in that it failed to provide adequate space for assorting and handling said structural steel, necessitating this plaintiff's using extra time and labor in assorting and handling said steel, the reasonable value of said extra time and labor being \$2459.00.

V.

That plaintiff, on account of the failure of defendant, as above stated, has been damaged in the sum of \$2459.00, which sum is long past due and for which amount plaintiff has demanded payment from the defendant, and defendant has refused and now refuses to pay the same.

(Amended Complaint.)

And plaintiff, for a fifth cause of action, alleges :

I.

That it is a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of Oregon, with its principal place of business at Portland, Multnomah County, Oregon, and that at the times hereinafter mentioned it was a corporation duly authorized to transact business in the Province of British Columbia, Canada, with its principal place of business at Prince Rupert, British Columbia, all in accordance with the Foreign Companies Act of the Dominion of Canada.

II.

That the defendant is a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of New Jersey, and duly authorized to transact business as a foreign corporation within the State of Oregon.

III.

That on or about November 16th, 1912, and at various other dates, after plaintiff and defendant entered into a contract for the furnishing of all necessary labor and equipment to erect, and rivet the structural steel of the boiler shop, blacksmith shop and other terminal buildings and dry docks of the Grand Trunk Pacific Company, at Prince Rupert, British Columbia, and while this plaintiff was

(Amended Complaint.)

engaged in said work on said premises, this plaintiff, at the special instance and request of the defendant, performed extra work, which it was understood and agreed that defendant should pay for, during the month of April, 1915, according to an itemized statement, a copy of which is attached hereto and made a part hereof, amounting to \$148.25.

IV.

That during the months of May and June, 1915, plaintiff performed extra work at the special instance and request of the defendant amounting to \$150.00, according to an itemized statement a copy of which is attached hereto and made a part hereof.

V.

That during the month of July, 1915, plaintiff performed extra work at the special instance and request of the defendant amounting to the sum of \$102.15, which it was understood and agreed that the defendant should pay for.

VI.

That said amounts of \$148.25, \$150.30, and \$102.15, making a total of \$400.70, are now long past due and plaintiff has made demand upon the defendant for the payment of said amounts but defendant has refused and now refuses to pay the same, or any part thereof.

(Amended Complaint.)

Wherefore plaintiff demands judgment against the defendant for the sum of \$9232.03, together with the costs and disbursements of this action.

E. L. McDOUGAL,
Attorney for Plaintiff.

STATE OF OREGON,

County of Multnomah,—ss.

I, Otho Poole, being first duly sworn, depose and say that I am the Pres. of plaintiff corporation, in the above entitled action, and that the foregoing amended complaint, is true as I verily believe.

(Sgd) OTHO POOLE.

Subscribed and sworn to before me this 21st day of April, 1916,

(Seal) (Sgd) E. L. McDOUGAL,
Notary Public for the State of Oregon.
My commission expires Sept. 23, 1916.

Filed September 19, 1916. G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit, on the 6th day of May, 1916, there was duly filed in said Court, an Answer, in words and figures as follows, to-wit:

*In the District Court of the United States for the
District of Oregon.*

POOLE-DEAN COMPANY, a corporation,
Plaintiff,

vs.

UNITED STATES STEEL PRODUCTS COM-
PANY, a corporation,
Defendant.

Answer

Comes now defendant above named and for answer to plaintiff's amended complaint alleges, admits, and denies as follows:

I.

On or about the sixteenth day of November, 1912, defendant entered into a contract with Grand Trunk Pacific Railway Company wherein and whereby defendant agreed to furnish materials for and to construct certain buildings at Prince Rupert, British Columbia, according to certain plans, drawings, and specifications, which plans, drawings, and specifications were made a part of said contract.

II.

In and by the terms of said contract it was agreed by and between defendant and Grand Trunk

(Answer.)

Pacific Railway that defendant should, if defendant so desired, sublet a part of said contract.

III.

Thereafter defendant exhibited and submitted to plaintiff a copy of said plans, drawings, and specifications and invited plaintiff to submit proposals for a contract wherein and whereby defendant should sublet to plaintiff a part of said contract between defendant and Grand Trunk Pacific Railway.

IV.

Thereafter plaintiff submitted to defendant written proposals for the performance of a part of said contract between defendant and Grand Trunk Pacific Railway, which proposals were accepted in writing by defendant, and said proposals and acceptance constituted and do now constitute the contract between plaintiff and defendant mentioned in plaintiff's said amended complaint.

V.

In and by the terms of said contract between plaintiff and defendant plaintiff agreed, among other things, to haul, erect, and rivet steel for the main buildings at Prince Rupert, British Columbia, to furnish and apply thereto two coats of paint, as per specifications, and to haul, erect, rivet, and caulk the steel work for the wing of the dry dock, and defendant agreed, among other things, to deliver

(Answer.)

all steel work to plaintiff on dock at Prince Rupert, British Columbia, and to pay plaintiff therefor eighteen dollars (\$18) per net ton of two thousand (2000) pounds, and it was agreed by and between plaintiff and defendant that said price of eighteen dollars (\$18) per net ton of two thousand (2000) pounds should cover and include the furnishing and applying by defendant of the said two coats of paint, as per specifications.

VI.

At and before the time of making said proposals, and at all times thereafter, it was mutually understood and agreed by and between plaintiff and defendant that said contract between plaintiff and defendant should constitute and the same did in fact constitute a subletting by defendant of a portion of the work contracted for by defendant under its said contract with Grand Trunk Pacific Railway.

VII.

It was mutually understood and agreed by and between plaintiff and defendant at the time said contract between plaintiff and defendant was entered into, and said contract between plaintiff and defendant was made upon the express understanding, that defendant should deliver said steel to plaintiff by water transportation, and that said steel should be delivered as completely fabricated as it was defendant's custom to ship by water transportation similar steel for similar work.

(Answer.)

VIII.

Defendant delivered all the steel required by plaintiff under plaintiff's said contract with defendant on dock at Prince Rupert, British Columbia, as completely fabricated as it was defendant's custom to ship by water transportation similar steel for similar work, and defendant in all respects fulfilled and completed its obligations towards plaintiff under defendant's said contract with plaintiff.

IX.

Said specifications provided, and said contract between plaintiff and defendant was made with the express understanding, that the construction operations on said main buildings and wing of dry dock should at all times be under the full control and management of Grand Trunk Pacific Railway and its officers and agents, and defendant in fact had no connection with the control or management of said construction operations other than to furnish and deliver said steel according to the terms of defendant's said contract with plaintiff, and plaintiff at all times during the course of plaintiff's construction operations on said buildings and wing of dry dock acted at all times under the orders and instructions of Grand Trunk Pacific Railway and its officers and agents and not under the orders and instructions of defendant or of its officers or agents.

(Answer.)

X.

It was mutually understood and agreed by and between plaintiff and defendant at the time said contract between plaintiff and defendant was entered into, and said contract between plaintiff and defendant was made with the express understanding, that the pontoons for the wing of the dry dock should be furnished and provided by Grand Trunk Pacific Railway and not by defendant, and said pontoons are the pontoons mentioned in plaintiff's said amended complaint; and it was mutually understood and agreed by and between plaintiff and defendant at the time said contract between plaintiff and defendant was entered into, and said contract between plaintiff and defendant was made with the express understanding, that space for storing, assorting, and handling said steel on the dock of Grand Trunk Pacific Railway at Prince Rupert, British Columbia, should be furnished and provided by Grand Trunk Pacific Railway, and not by defendant; and defendant alleges that the loss or damage, if any, suffered by plaintiff owing to delay in furnishing pontoons, re-handling of material, enforced idleness of equipment, and wages and transportation of men, or any of such causes, as alleged in paragraphs III and IV of plaintiff's second cause of action, in paragraphs III and IV of plaintiff's third cause of action, and in paragraphs III and IV of plaintiff's fourth cause of action, and as in plain-

(Answer.)

tiff's said amended complaint set forth, was in no manner due to or occasioned by any act or omission on the part of defendant or of defendant's officers or agents.

XI.

Defendant admits that during the months of April, May, June, and July of 1915, plaintiff performed certain work at the request of defendant, to the value of four hundred and 70/100 dollars (\$400.70), but alleges that said work was at various times ordered by Grand Trunk Pacific Railway and its officers and agents, that said orders were transmitted by defendant to plaintiff, and that, after said extra work was completed, plaintiff's claim therefor to the amount of four hundred and 70/100 dollars (\$400.70) was by plaintiff presented to Grand Trunk Pacific Railway, and said claim was thereafter by Grand Trunk Pacific Railway duly allowed, credit therefor given to plaintiff, and the amount thereof deducted from certain indebtedness due from plaintiff to Grand Trunk Pacific Railway.

XII.

Defendant admits that it is a corporation duly incorporated, organized, and existing under and by virtue of the laws of the State of New Jersey and duly authorized to transact business as a foreign corporation within the State of Oregon.

XIII.

Defendant admits that plaintiff is a corporation

(Answer.)

duly incorporated, organized, and existing under and by virtue of the laws of the State of Oregon with its principal place of business at Portland, Multnomah County, Oregon, and that at all the times mentioned in plaintiff's said amended complaint plaintiff was a corporation duly authorized to transact business in the Province of British Columbia, Canada, with its principal place of business at Prince Rupert, British Columbia, all in accordance with the Foreign Companies Act of the Dominion of Canada.

XIV.

Except as hereinbefore in this answer specifically alleged or admitted, defendant denies each and every allegation of plaintiff's said amended complaint.

Wherefore defendant prays that this action be dismissed with costs to defendant.

TEAL, MINOR & WINFREE,
and ROGERS MAC VEAGH,
Attorneys for Defendant.

STATE OF OREGON,

County of Multnomah,—ss.

I, C. C. Overmire, being first duly sworn, depose and say that I am Contracting Manager of the Bridge and Structural Department of defendant United States Steel Products Company, a corporation, in the above entitled action, that I have read the foregoing answer, know the contents thereof and the same is true as I verily believe.

C. C. OVERMIRE.

(Answer.)

Subscribed and sworn to before me this 6th day of May, 1916.

(Notarial Seal)

ROGERS MAC VEAGH,

Notary Public for Oregon.

My commission expires Nov. 15, 1919.

Filed May 6, 1916. G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit, on the 24th day of May, 1916, there was duly filed in said Court, a Reply, in words and figures as follows, to-wit:

*In the District Court of the United States for the
District of Oregon.*

POOLE-DEAN COMPANY, a corporation,

Plaintiff,

vs.

UNITED STATES STEEL PRODUCTS COM-

PANY, a corporation,

Defendant.

Reply

Comes now the plaintiff and for reply to defendant's answer on file herein, denies each and every allegation therein, except as to the facts therein contained which are substantially pleaded in plaintiff's amended complaint on file herein.

E. L. McDOUGAL,

Attorney for Plaintiff.

(Reply.)

STATE OF OREGON,

County of Multnomah,—ss.

I, Otho Poole, being first duly sworn, depose and say that I am the Pres. plaintiff corporation, in the above entitled suit, and that the foregoing reply is true as I verily believe.

(Sgd) OTHO POOLE.

Subscribed and sworn to before me this 24th day of May, 1916.

(Notarial Seal) (Sgd) E. L. McDOUGAL,
Notary Public for the State of Oregon.

Filed May 24, 1916. G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit, on the 18th day of October, 1916, there was duly filed in said Court a Verdict, in words and figures as follows:

Verdict

We, the Jury duly impaneled to try the above entitled case, do find our verdict in favor of the plaintiff and against the defendant and assess plaintiff's damages in the sum of (\$7,000.00/100) Seven Thousand and no/100 Dollars.

(Signed) EDW. M. ROBERTS,
Foreman.

Filed October 18, 1916. G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit, on Wednesday, the 18th day of October, 1916, the same being the 92nd Judicial Day of the regular July term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

Judgment

Now, at this day come the parties hereto by their counsel as of yesterday, whereupon the Jury impaneled herein comes into Court and returns to the Court a Verdict, in words and figures as follows, to-wit:

“We, the Jury duly impaneled to try the above entitled case, do find our verdict in favor of the plaintiff and against the defendant and assess plaintiff’s damages in the sum of (\$7,000.00/100) Seven Thousand and no/100 Dollars.

(Signed) EDW. M. ROBERTS,
Foreman.”

Which verdict is received by the Court and ordered to be entered,

WHEREUPON IT IS CONSIDERED that said plaintiff do have and recover of and from said defendant the sum of \$7,000.00, together with its costs and disbursements herein taxed at \$39.40, and that it have execution therefor, and on motion of said defendant,

IT IS ORDERED that it be and is hereby allowed sixty (60) days from this date within which

(Judgment.)

to file a motion for a new trial herein, and also to submit a Bill of Exceptions herein; and that execution upon the judgment in this cause be stayed during such time.

Filed October 18, 1916. G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit, on the 6th day of December, 1916, there was duly filed in said Court, a Motion for a New Trial, in words and figures as follows, to-wit:

*In the District Court of the United States for the
District of Oregon.*

POOLE-DEAN COMPANY, a corporation,
Plaintiff,

v.

UNITED STATES STEEL PRODUCTS COM-
PANY, a corporation,
Defendant.

Motion for a New Trial

Comes now the defendant and moves the Court for an order that the judgment in this cause and the verdict of the jury upon which the same is entered be set aside and a new trial granted for the following causes materially affecting the substantial rights of the defendant:

(Motion for New Trial.)

1. That the evidence is not sufficient to justify the verdict of the said judgment.

2. That the verdict and the judgment entered thereon is against law.

3. Error in law occurring at the trial and excepted to by the defendant.

TEAL, MINOR & WINFREE,
ROGERS MAC VEAGH,
Attorneys for Defendant.

Filed December 6, 1916. G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit, on Monday, the 18th day of December, 1916, the same being the 36th Judicial Day of the regular November term of said Court; Present: the Honorable Charles E. Wolverton, United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

Order Denying Motion for New Trial

Now at this time this cause comes on to be heard upon the motion of the defendant for a new trial herein, and is argued by Mr. E. L. McDougal, of counsel for the plaintiff, and by Mr. Wirt Minor and Mr. Rogers Mac Veagh, of counsel for the defendant, on consideration hereof,

IT IS ORDERED and adjudged that said Motion for a New Trial be and the same is hereby denied.

Filed December 18, 1916. G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit, on the 3rd day of January, 1917, there was duly filed in said Court a Petition for Writ of Error, in words and figures as follows, to-wit:

*In the District Court of the United States for the
District of Oregon.*

POOLE-DEAN COMPANY, a corporation,
Plaintiff,

v.

UNITED STATES STEEL PRODUCTS COM-
PANY, a corporation,
Defendant.

Petition for Writ of Error

*To the Honorable Judges of the District Court of
the United States for the District of Oregon:*

Comes now United States Steel Products Company, a corporation, petitioner, and defendant in the above-entitled cause wherein Poole-Dean Company, a corporation, is plaintiff and said United States Steel Products Company, a corporation, is defendant, by its attorneys, Teal, Minor & Winfree and Rogers Mac Veagh, and feeling itself aggrieved by the judgment entered upon the verdict in said cause on the 18th day of October, 1916, prays that a writ of error may issue and that said United States Steel Products Company may be allowed to bring up for review before the Honorable United States Circuit Court of Appeals for the Ninth Circuit said judgment in said cause under and accord-

(Petition for Writ of Error.)

ing to the laws of the United States in that behalf made and provided; that your petitioner may prosecute said writ of error to the said United States Circuit Court of Appeals for the Ninth Circuit; that said judgment upon said verdict may be reversed by said United States Circuit Court of Appeals for the Ninth Circuit; that upon the giving by your petitioner of security upon said writ of error in the amount of eight thousand dollars (\$8,000), the proceedings of this Court may be suspended and stayed until the determination of said writ of error by said United States Circuit Court of Appeals for the Ninth Circuit; and for such other and further relief in the premises as may be just; and your petitioner will ever pray, etc.

Dated January 3, 1917.

UNITED STATES STEEL
PRODUCTS COMPANY.

By Teal, Minor & Winfree,

Its Attorneys.

TEAL, MINOR & WINFREE and
ROGERS MAC VEAGH,

Attorneys for Defendant.

Filed January 3, 1917. G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit, on Wednesday, the 3rd day of January, 1917, the same being the 50th Judicial day of the regular November term of said Court; Present: the Honorable Charles E. Wolverton, the United States District Judge, presiding, the following proceedings were had in said cause, to-wit:

*In the District Court of the United States for the
District of Oregon.*

POOLE-DEAN COMPANY, a corporation,
Plaintiff,
vs.

UNITED STATES STEEL PRODUCTS COM-
PANY, a corporatin,
Defendant.

**Order Allowing Writ of Error Staying Pro-
ceedings, and Fixing the Amount of Bond**

This day coming on to be heard the motion of the United States Steel Products Company, a corporation, defendants in the above entitled cause, by its attorneys, Teal, Minor & Winfree and Rogers Mac Veagh, for an order allowing a Writ of Error in the above entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, and staying proceedings upon the judgment heretofore entered herein until the determination of said Writ of Error, and it appearing to the Court that said defendant has heretofore filed its petition for such Writ of Error and therewith its Assignment of

(Order Allowing Writ of Error.)

Errors, and the Court being fully advised in the premises, it is

CONSIDERED, ORDERED, ADJUDGED and DECREED that a Writ of Error be and the same is hereby allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore entered herein, and it is further

CONSIDERED, ORDERED, ADJUDGED and DECREED that upon the giving by said United States Steel Products Company of security, with proper surety or sureties, acceptable to this Court in the amount of Eight Thousand (\$8,000.00) Dollars, the proceedings of this Court be suspended and stayed until the determination of said Writ of Error by said United States Circuit Court of Appeals for the Ninth Circuit.

Dated in open Court this 3rd day of January, 1917.

CHAS. E. WOLVERTON,

District Judge.

Filed January 3, 1917. G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit, on the 3rd day of January, 1917, there was duly filed in said Court a Supersedeas Bond, in words and figures as follows, to-wit:

*In the District Court of the United States for the
District of Oregon.*

POOLE-DEAN COMPANY, a corporation,
Plaintiff,

vs.

UNITED STATES STEEL PRODUCTS COM-
PANY, a corporation,
Defendant.

Supersedeas Bond.

KNOW ALL MEN BY THESE PRESENTS,
That we, UNITED STATES STEEL PRODUCTS
COMPANY, a corporation, as Principal, and
UNITED STATES FIDELITY & GUARANTY
COMPANY, OF BALTIMORE, MARYLAND, a
corporation, as Surety, are held and firmly bound
unto Poole-Dean Company, its successors and as-
signs, in the sum of Eight Thousand (\$8,000.00)
Dollars, lawful money of the United States of Amer-
ica, for the payment of which sum well and truly
to be made we and each of us hereby bind ourselves,
our successors and assigns, jointly and severally by
these presents.

Sealed with our seals and dated this 3rd day of
January, 1917.

The condition of this obligation is such that:

WHEREAS, the above named United States

(Supersedeas Bond.)

Steel Products Company, a corporation, has sued out a Writ of Error in the United States Circuit Court of Appeals for the Ninth Circuit, to bring up for review before said United States Circuit Court of Appeals for the Ninth Circuit a judgment rendered by the District Court of the United States for the District of Oregon upon a verdict in the above entitled cause, and

WHEREAS, said United States Steel Products Company, a corporation, has prayed for a reversal by said United States Circuit Court of Appeals for the Ninth Circuit of said judgment rendered by the said District Court of the United States for the District of Oregon, and desires a stay of proceedings in said District Court of the United States for the District of Oregon until the determination of said Writ of Error by said United States Circuit Court of Appeals for the Ninth Circuit:

NOW, THEREFORE, if said United States Steel Products Company shall prosecute its Writ of Error to effect, and answers all damages and costs that may be awarded against it if it fail to make its plea good, including just damages for delay and costs and interest on said Writ of Error, then the above obligation to be void, otherwise to remain in full force and virtue. UNITED STATES STEEL

PRODUCTS COMPANY,

By Teal, Minor & Winfree and

Rogers Mac Veagh,

Its Attorneys.

(Supersedeas Bond.)

UNITED STATES FIDELITY & GUARANTY
COMPANY, OF BALTIMORE, MARYLAND,
(Corporate Seal)

By Douglas R. Tate,
Its Attorney in Fact.

This bond approved this 3rd day of January,
1917.

CHAS. E. WOLVERTON,
Judge.

Filed January 3, 1917. G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit, on the 3rd day of
January, 1917, there was duly filed in said Court
an Assignment of Errors, in words and figures as
follows, to-wit:

*In the District Court of the United States for the
District of Oregon.*

POOLE-DEAN COMPANY, a corporation,
Plaintiff,

vs.

UNITED STATES STEEL PRODUCTS COM-
PANY, a corporation,
Defendant.

Assignment of Errors

Comes now United States Steel Products Com-
pany, a corporation, defendant in the above entitled
cause, and plaintiff in error upon the Writ of Error
prosecuted by it in the above entitled cause, and

(Assignment of Errors.)

makes and files the following assignment of errors upon which it relies in the prosecution of said Writ of Error:

I.

The District Court erred in overruling the objection of the defendant to a paper purporting to be a letter dated November 10, 1915, from Poole-Dean Company to defendant, marked "Plaintiff's Exhibit I," and in admitting said paper in evidence.

II.

The District Court erred in overruling the objection of the defendant to a paper purporting to be a letter dated December 2, 1913, from defendant to Poole-Dean Company, marked "Plaintiff's Exhibit L," and in admitting said paper in evidence.

III.

The District Court erred in overruling the objection of the defendant to the following question propounded by counsel for the plaintiff to the witness Charles O. Dean, to-wit:

"Q. Do you know what the estimate was upon which the steel was supposed to have been handled, assuming that the yards up there were reasonably free and open and there was a reasonable amount of space?",

and in permitting said question to be answered and in admitting any evidence with regard to the esti-

(Assignment of Errors.)

mate of the witness as to the cost of handling the steel under different conditions from those actually obtaining at the site.

IV.

The District Court erred in overruling the objection of the defendant to the following question propounded to the witness, Charles O. Dean, to-wit:

“Q. Would you say in your opinion, based upon your experience, that ninety cents (90c) was a reasonable charge?”,

and in permitting said question to be answered and in admitting any evidence with regard to the opinion of the witness as to what would be a reasonable charge for handling steel under conditions different from those actually obtaining at the site.

V.

Witness C. C. Overmire, after testifying, referring to the conversation that took place between witness and Pillsbury upon the occasion of witness' visit with Poole at Prince Rupert, that absolutely no agreement had been entered into between witness and Pillsbury in reference to the sites of the buildings and the space available for handling material, was asked how he explained the inconsistent terms in his letters (Plaintiff's Exhibits "S", "T", "U", "V", "W" and "X"). To this question defendant objected on the ground that said letters, and every-

(Assignment of Errors.)

thing which witness had said concerning the matter, contained merely representations made by the railway's engineers, but no agreement or promise in regard to the site, and because the form of the question would lead the jury to believe that there was an agreement. Thereupon the Court overruled the objection, ruling that the jury would be the judges as to what constituted the agreement, and would have to take into consideration the correspondence between the parties about the matter and what was said and done between the parties, and in so overruling said objection of the defendant and in making said ruling, the District Court erred.

VI.

The District Court erred in denying the motion of the defendant to instruct the Jury to return a verdict for the defendant, which motion was made and submitted after all the evidence on the part of both plaintiff and defendant in said cause had been introduced and before the Jury retired, and in refusing to instruct the Jury to return a verdict for the defendant.

VII.

The District Court erred in denying the motion of the defendant to instruct the Jury to return a verdict for the defendant upon the first alleged breach of contract and cause of action, which motion was made and submitted after all the evidence

(Assignment of Errors.)

on the part of both plaintiff and defendant in said cause had been introduced and before the Jury retired, and in refusing to instruct the Jury to return a verdict for the defendant upon said first alleged breach of contract and cause of action.

VIII.

The District Court erred in denying the motion of the defendant to instruct the Jury to return a verdict for the defendant upon the second alleged breach of contract and cause of action, which motion was made and submitted after all the evidence on the part of both plaintiff and defendant in said cause had been introduced and before the Jury retired, and in refusing to instruct the Jury to return a verdict for the defendant upon said second alleged breach of contract and cause of action.

IX.

The District Court erred in denying the motion of the defendant to instruct the Jury to return a verdict for the defendant upon the third alleged breach of contract and cause of action, which motion was made and submitted after all the evidence on the part of both plaintiff and defendant in said cause had been introduced and before the Jury retired, and in refusing to instruct the Jury to return a verdict for the defendant upon said third alleged breach of contract and cause of action.

(Assignment of Errors.)

X.

The District Court erred in denying the motion of the defendant to instruct the Jury to return a verdict for the defendant upon the fourth alleged breach of contract and cause of action, which motion was made and submitted after all the evidence on the part of both plaintiff and defendant in said cause had been introduced and before the Jury retired, and in refusing to instruct the Jury to return a verdict for the defendant upon said fourth alleged breach of contract and cause of action.

XI.

The District Court erred in refusing to give the following instruction to the Jury, which instruction was presented in writing to the District Court before the Jury retired with the request that it be given to the Jury as follows, to-wit:

“This controversy grows out of an agreement between defendant and the Grand Trunk Pacific Railway in which defendant agreed to furnish all structural steel for the erection of certain buildings for said Railway at Prince Rupert, British Columbia, and to erect said steel all according to certain plans and specifications in writing. These plans and specifications thereby became a part of the defendant’s contract. The defendant reserved the right to sublet the erection of the steel and did sublet

(Assignment of Errors.)

this part of its contract to the plaintiff. Thereby the contract between the plaintiff and defendant became in all respects subject to the plans and specifications according to which the original contract between the defendant and the Railway Company was awarded, and the plaintiff is conclusively presumed to know and is bound by everything contained in the plans and specifications which relate to the erection of the steel."

XII.

The District Court erred in refusing to give the following instruction to the Jury, which instruction was presented in writing to the District Court before the Jury retired with the request that it be given to the Jury as follows, to-wit:

"There are four distinct causes of action joined by plaintiff in this case (although five are stated in the complaint), growing out of four alleged breaches of contract on the part of defendant. First (numbered I in the complaint) plaintiff alleges that defendant agreed to deliver the steel completely fabricated, but failed to do so, and later agreed to have plaintiff charge defendant for the necessary fabrication, but failed to pay such charge. This alleged breach of the contract, set forth in the first cause of action does relate to the steel delivered for the dry dock. It is admitted that

(Assignment of Errors.)

the steel for the dry dock was fabricated according to the contract. This first cause of action, therefore, in which plaintiff claims damages in the sum of \$3330.69 is limited to the fabrication of the steel for the foundry, cold storage, blacksmith, boiler and machine shop building and the ship shed. The second alleged breach of contract is set forth in the complaint in the two causes of action numbered therein II and III. These two causes of action should be considered together, as they are claims for damages for alleged delays on the part of the defendant in furnishing pontoons for the dry dock upon which the steel was to be erected. For these alleged delays plaintiff claims damages in the sum of \$2123.64 as the rental value of its plant for the period extending from September 1, 1914, to November 4, 1914, and also claims damages in the sum of \$918.00 for moneys which it claims it was compelled to expend in paying transportation for employees to and from Vancouver, B. C. There is no claim that the steel for all the buildings, except the dry dock, was not furnished in time. The next alleged breach of the contract contained in the cause of action numbered IV in the complaint is that the defendant agreed to furnish storage space for the steel for the dry dock, but failed to do so. This cause of action, therefore, is limited to the steel for the dry dock and

(Assignment of Errors.)

it is admitted that the plaintiff has no complaint for lack of space furnished for the steel for all other buildings. The cause of action numbered V in the complaint is based not upon the original contract but upon the new contract not covered by the original contract at all. In this the plaintiff claims that the defendant ordered some work done, which the plaintiff did; that this work amounted to the sum of \$400.70 and that the defendant has refused to pay for the same."

XIII.

The District Court erred in refusing to give the following instruction to the Jury, which instruction was presented in writing to the District Court before the Jury retired with the request that it be given to the Jury as follows, to-wit:

"There is no question between the parties that the pontoons upon which the dry dock were to be erected should be furnished by the Grand Trunk Pacific Railway and not by the defendant, and the defendant owed to the plaintiff no duty to furnish such pontoons at any particular time, but only when the same were furnished to it, the defendant, by the Grand Trunk Pacific Railway. The evidence shows, without contradiction, that any delay in furnishing the pontoons was not due to the defendant but to the Grand Trunk Pacific

(Assignment of Errors.)

Railway Company. I therefore charge you that the plaintiff cannot recover for the alleged delays in furnishing the pontoons and your verdict upon the second and third causes of action must, therefore, be for the defendant."

XIV.

The District Court erred in refusing to give the following instruction to the Jury, which instruction was presented in writing to the District Court before the Jury retired with the request that it be given to the Jury as follows, to-wit:

"In regard to the fabrication of the steel for the buildings other than the dry dock, I charge you that the parties did agree that the steel for these buildings should be fabricated by the defendant at the shops; that is to say, should be assembled and riveted together at the shops to the same extent to which similar steel for similar work when transported by ship is ordinarily or usually fabricated; that is to say, usually assembled and riveted. This is a question of fact to be determined by you upon the evidence submitted. The burden of proof upon this question is upon the plaintiff."

XV.

The District Court erred in refusing to give the following instruction to the Jury, which instruction was presented in writing to the District Court be-

(Assignment of Errors.)

fore the Jury retired with the request that it be given to the Jury as follows, to-wit:

“A letter from the plaintiff to the defendant dated November 7, 1913, and the answer to the same dated November 11, 1913, both of which are in evidence, define the extent to which the steel should be fabricated, assembled and riveted. I charge you, therefore, that it was the duty of the defendant to fabricate, assemble and rivet steel to the same extent to which similar steel for use in similar buildings is usually fabricated, assembled and riveted when the same is to be transported by ship for export. Whether the steel was so fabricated, assembled and riveted is a question of fact which you will determine from the evidence. You will understand, however, that there is no question between the parties that the steel for the dry dock was fabricated, assembled and riveted in all respects as required by the contract between the parties.”

XVI.

The District Court erred in refusing to give the following instruction to the Jury, which instruction was presented in writing to the District Court before the Jury retired with the request that it be given to the Jury as follows, to-wit:

“The contract between the parties provides

(Assignment of Errors.)

that the steel shall be delivered on the dock. It does not provide that any space should be furnished by the defendant for storing, assorting, or handling the steel. The plaintiff was under the contract to receive steel on the dock and to do all things necessary after it was received to erect the building according to the plans and specifications. This included the handling and assorting of the steel wherever necessary. I charge you, therefore, that there was no obligation on the part of the defendant to furnish space for this purpose and that you will, therefore, find a verdict for the defendant upon the fourth cause of action."

XVII.

The District Court erred in refusing to give the following instruction to the Jury, which instruction was presented in writing to the District Court before the Jury retired with the request that it be given to the Jury as follows, to-wit:

"The fourth cause of action, as I have stated, grows out of a new and independent contract. It is admitted that the plaintiff did the work and that the value of this work was \$400.70. It is contended on the part of the defendant that the orders to do this work were issued by the Grand Trunk Pacific Railway and were merely transmitted by the defendant to the

(Assignment of Errors.)

plaintiff. If you find from the evidence that this work was ordered by the Grand Trunk Pacific Railway and the orders merely transmitted to the plaintiff by the defendant, then the defendant will not be liable to plaintiff for the value of this work. This is a question of fact to be determined by you from the evidence and the burden of proving that the work was performed for the defendant is upon the plaintiff."

XVIII.

The District Court erred in refusing to give the following instruction to the Jury, which instruction was presented in writing to the District Court before the Jury retired with the request that it be given to the Jury as follows, to-wit:

"In regard to the extra work for which the plaintiff claims \$400.70, the defendant alleges in its answer that plaintiff presented a claim for this work in said sum to the Grand Trunk Pacific Railway Company, that the claim was allowed by the Grand Trunk Pacific Railway Company and that the defendant was indebted to the Grand Trunk Pacific Railway Company in a sum exceeding \$400.70 and the amount of this bill was allowed to the plaintiff as a credit upon its indebtedness to the Grand Trunk Pacific Railway Company. If you find from the evidence that the plaintiff did present a claim

(Assignment of Errors.)

for this sum to the Grand Trunk Pacific Railway Company and this claim was allowed, that at the time that it was allowed the plaintiff was indebted to the Grand Trunk Pacific Railway Company in a sum exceeding \$400.70 and that this sum was allowed to the plaintiff as a credit upon such indebtedness, then I charge you that the plaintiff has received compensation for this extra work in this sum and that it cannot recover from the defendant."

XIX.

The District Court erred in refusing to give the following instruction to the Jury, which instruction was presented in writing to the District Court before the Jury retired with the request that it be given to the Jury as follows, to-wit:

"You are instructed that it was the duty of the Railway, and not of defendant, to furnish pontoons for the dry dock wings, and that plaintiff was not bound to begin erection work on said wings until three pontoons had been furnished plaintiff by the Railway. You are also instructed that plaintiff was bound to do all its work upon said wings under the direct supervision of the Railway and was bound to carry out the instructions of the Railway concerning such work. Defendant had no right to give instructions or to exercise supervision over such work except as and when acting on behalf of

(Assignment of Errors.)

the Railway. Therefore, if you find that plaintiff was delayed in erecting said wings by lack of sufficient pontoons, or if you find that plaintiff was instructed to begin erecting said wings before three pontoons had been furnished to plaintiff, in either case your finding will not show any breach of legal duty on the part of defendant, and your verdict upon the second alleged breach of contract and cause of action must be for defendant."

XX.

The District Court erred in instructing the Jury as follows, to-wit:

"Now, to these three causes of action, the second, third, and fourth, the defendant interposes a defense to this effect: That 'said specifications provided, and said contract between plaintiff and defendant was made with the express understanding, that the construction operations on said main buildings and wing of dry dock should at all times be under the full control and management of the Grand Trunk Pacific Railway and its officers and agents.' And it is further alleged that, 'It was mutually understood and agreed by and between plaintiff and defendant at the time said contract between plaintiff and defendant was entered into, and said contract between plaintiff and defendant was made with the express un-

(Assignment of Errors.)

derstanding, that the pontoons for the wing of the dry dock should be furnished and provided by Grand Trunk Pacific Railway and not by defendant, and said pontoons are the pontoons mentioned in plaintiff's said amended complaint; and it was mutually understood and agreed by and between plaintiff and defendant at the time said contract between plaintiff and defendant was entered into, and said contract between plaintiff and defendant was made with the express understanding, that space for storing, assorting, and handling said steel on the dock of Grand Trunk Pacific Railway at Prince Rupert, British Columbia, should be furnished and provided by Grand Trunk Pacific Railway, and not by defendant.'

"So the defense, then, to these three causes of action is based upon the alleged fact that the plaintiff, and that it was so understood by and between the plaintiff and defendant, should look to the Grand Trunk Pacific Railway Company for these rights and privileges, and that it was not to look to the defendant company; that is to say, that the plaintiff was to look to the Grand Trunk Pacific Railway Company for the furnishing of this space that is complained about, and for the time of the beginning of the work, and for the other things that are alleged in these three causes of action, and not to the defendant company. This, of course, is based

(Assignment of Errors.)

upon the fact that the Grand Trunk Pacific Railway Company was making these improvements, and that the contract of the defendant company was made with the Grand Trunk Pacific Railway Company to furnish the materials and to erect the steel in the buildings. And I might say this, in this relation, however: That if it had been the defendant company who was erecting this steel into the buildings, it might be inquired whether or not it was not the duty of the Grand Trunk Pacific Railway Company to furnish adequate space for handling the steel. If that was the case, then the inquiry may be extended—a sub-contract having been let to the plaintiff company to erect this steel and put it into the buildings, whether or not the defendant company did not assume the obligation that would have rested upon the Grand Trunk Pacific Railway Company in the first instance of providing adequate space for the carrying on of the work in riveting this steel and in putting it into the buildings. I submit that, gentlemen of the Jury, for your consideration, along with the alleged contract and the denials thereof, for determination as to whose duty it was to furnish space—whether or not that was a duty devolving upon the defendant company, or whether or not the plaintiff was to look to the Railway Company alone for furnishing that space, and not to the defendant.”

(Assignment of Errors.)

XXI.

The District Court erred in entering a judgment in this cause in favor of the plaintiff and against the defendant.

TEAL, MINOR & WINFREE and
ROGERS MAC VEAGH,
Attorneys for Defendant United States
Steel Products Company, a corpora-
tion, the Plaintiff in Error.

Filed January 3, 1917. G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit, on the 9th day of January, 1917, there was duly filed in said Court a Bill of Exceptions, in words and figures as follows:

*In the District Court of the United States for the
District of Oregon.*

POOLE-DEAN COMPANY, a corporation,
Plaintiff,
vs.

UNITED STATES STEEL PRODUCTS COM-
PANY, a corporation,
Defendant.

Bill of Exceptions

BE IT REMEMBERED, That on the 12th day of October, 1916, there came on for trial before the

(Bill of Exceptions.)

District Court of the United States for the District of Oregon a certain cause wherein Poole-Dean Company, a corporation, was plaintiff and United States Steel Products Company, a corporation, was defendant, the same being a regular day of the regular term of said District Court, commencing on the first Monday of July, 1916. There were present the Honorable Charles E. Wolverton, presiding; the Clerk of said Court, the Marshal and the bailiffs of said Court. Thereupon the said cause coming on to be heard, the jury was duly impaneled and sworn, plaintiff being represented by Messrs. McDougal & McDougal, its attorneys, and defendant being represented by Messrs. Teal, Minor & Winfree and Rogers Mac Veagh, Esq., its attorneys.

Thereupon the plaintiff introduced evidence to sustain the issues upon its part, and called as a witness one OTHO POOLE, who was duly sworn and testified as follows:

(Testimony of Otho Poole for Plaintiff)

Witness testified that he is President and General Manager of the Poole-Dean Company; that he is acquainted with Mr. Overmire, the contracting manager of United States Steel Products Company; that they made Mr. Overmire a proposal to do the steel work for the erection of the buildings and the pontoons at Prince Rupert, British Columbia, which

(Bill of Exceptions—Testimony of Otho Poole.)

proposal was in writing so far as the price was concerned; that they (defendant) wrote him (plaintiff) a letter about three or four months after they (plaintiff) got the contract; and that plaintiff never got a formal written contract from defendant.

Witness further testified that he first took up with Mr. Overmire the question of erecting the steel at Prince Rupert some time in September, 1912; and thereupon plaintiff offered in evidence the proposal by plaintiff, which proposal was identified by the witness and was introduced in evidence and marked "Plaintiff's Exhibit A," which is as follows:

(Plaintiff's Exhibit "A." Proposal of Poole-Dean Company to United States Steel Products Company)

"POOLE-DEAN COMPANY,
268 North 13th Street,
Portland, Oregon.

November Sixteenth, 1912.

U. S. Steel Products Co.,
Selling Building,
Portland, Ore.

Gentlemen:

We propose to furnish all necessary labor and equipment to erect, rivet and paint the structural steel to be used in buildings and smoke stack for the Grand Trunk Pacific Railway at Prince Rupert, B. C., for the sum of EIGHTEEN (\$18.00) DOL-

(Bill of Exceptions—Plaintiff's Exhibit "A.")

LARS per ton of 2000#. Material to be delivered on docks at building sites.

Yours very truly,

POOLE-DEAN COMPANY,

OP/AWH

Per Otho Poole."

Witness further testified that he never got an answer to this letter; that he began work at Prince Rupert in November, 1913; that Mr. Overmire instructed him to get his men and equipment to start the job; that Mr. Dean got his men from Vancouver and shipped them up; that he shipped part of his equipment from Portland and part from Vancouver.

Witness further testified that the letter marked Plaintiff's Exhibit "A" was accepted verbally; that when he figured the job, Mr. Overmire told him "If we get the job you will get it"; that witness kept in touch with Mr. Overmire right along after he figured the work; that he was up at Mr. Overmire's office one day and Mr. Overmire said to him, "Well, we have got that job up north"; that it ran along for some time and that he asked Mr. Overmire about the contract at different times and that a letter was written by Mr. Fey, as witness had told Mr. Overmire that he would like to have something in writing to show that he was going to get the contract.

Witness further testified that after Mr. Overmire notified him to start the job, he sent Mr. Dean up right away to get ready to handle the steel; that

(Bill of Exceptions—Testimony of Otho Poole.)

when this thing first came up, Mr. Overmire called him up to the office and took up the matter with him, told him that this job was coming up up north and that they would have to go to Seattle to get plans to figure the job; that after they got to Seattle, they found there were no plans there they could get and Mr. Overmire said they had better go on up to Prince Rupert; that Mr. Overmire said they could see the site, make up the figure and would know more about the thing, and it would be better to go up there any way; that he and Mr. Overmire went up to Prince Rupert and got the plans there and went over the thing and discussed this whole matter, that is, the shipping and the site and the whole thing while they were there.

Witness further testified that at that time he took up the matter of shipping with Mr. Overmire and asked him how the steel was going to be shipped; that Mr. Overmire said he didn't know at that time, that they might ship it two or three different ways,—by boat, to Vancouver by rail and up by car-ferry, or to Vancouver by rail and up by barges; that witness told Mr. Overmire that his reason for asking this was that sometimes shipping by boat they might ship this steel knocked down in order to save on freight; that Mr. Overmire told him that would not be the case because it made no difference to the Steel Products Company as they shipped it on their own boats and that the stuff would come riveted up; that Mr. Overmire told him

(Bill of Exceptions—Testimony of Otho Poole.)

to base his figure on everything being riveted at the shop that could be riveted.

Witness further testified that he told Mr. Overmire that he had to ship his men from Vancouver and wanted to know, when Mr. Overmire gave orders to start this work, if he would be able to complete it before having to tie up because he would have to ship his men back and pay traveling time and transportation on them, and it would run the expense of the job up if he had to ship men up two or three different times; that Mr. Overmire told him he would not give orders to start the job until he could complete it; that is, when he gave him orders, he would be able to complete the job before he would have to ship the men back.

Witness further testified that he and Mr. Overmire went down to the dock to see the site and that Mr. Overmire took up with Mr. Pillsbury the question of where the steel could be landed; that Mr. Pillsbury was the representative of Mr. Donnelly, and Mr. Donnelly was the engineer in charge of the work for either the Grand Trunk Pacific Railway or the Grand Trunk Pacific Development Company; that Mr. Overmire asked Mr. Pillsbury how much space he could have for handling this material, and that Mr. Pillsbury assured him he could have all the space that he needed; that witness based his figure on getting this space; that they talked of how witness was to handle the job; that witness was assured that he would not have to

(Bill of Exceptions—Testimony of Otho Poole.)

touch the material until it was landed on the dock; that witness shipped up two different derricks and engines and that, after he got up there, there was so much other stuff on the dock that the material had to be scattered around in different places and that he could not use the rig he shipped up for handling the stuff in the yard.

Witness further testified that they could not furnish any space to leave this material lay; that when the building-stuff came in, it was scattered around in half a dozen different places; that there were six buildings in all besides the floating dry dock; that he was to put up the steel in both the buildings and the dry dock.

Witness further testified that Mr. Overmire notified him to send his men up there about November, 1913; that witness had the engineer's plans to look at when he made his offer to the Steel Products Company; that there were no other plans covering the steel work except the Steel Products Company's own plans; that witness never saw the Steel Products Company's plans to figure the job; that the first witness saw the plans to go over them was when he was notified to start the job; that he gave the plans to Mr. Dean to take up with him to start the work, and that that was the first he and Mr. Dean knew that this material was coming knocked down.

Witness further testified that he took the plans and went up to Mr. Overmire's office the day before

(Bill of Exceptions—Testimony of Otho Poole.)

Mr. Dean left for Prince Rupert, and took the matter up with Mr. Overmire; that witness said, "This stuff, according to your plans, is coming knocked down, and you know we never figured it that way. I am going to bill you for the cost of this work when the job is finished. I am going to keep accurate cost on it and bill you for it when the job is finished. When is the contract going to be ready? I don't like to send Dean up because there is a lot of other stuff that is liable to come up if we haven't got that written contract ready"; that Mr. Overmire said, "I don't know what is the matter with it. I have been taking it up with them right along and I haven't got it yet. But you go up and start the job, because I am going to handle the thing here, and we will settle everything satisfactorily"; that upon that statement witness sent Mr. Dean up.

Witness further testified that he saw the material after it arrived at Prince Rupert; that he could tell from the shop detail plans, as distinguished from the engineer's plans, whether the material was coming, as witness called it, "knocked down" or not; that this stuff is built up in the shop, put together in the shop as completely as they can be put together for shipping; that they were using the kind of trusses that run to a point in those buildings, triangular in shape; that in building these trusses in the shop, they are built up of angles and plates, and these plates and angles are

(Bill of Exceptions—Testimony of Otho Poole.)

put together and riveted up in the shop; that this stuff was just bunched and none of it put together, just shipped out in bundles, boxes; that he did not expect the steel that came out for the dry dock to be riveted up.

Witness further testified that plaintiff's claim for One Hundred Sixty-six and 95/100 (\$166.95) Dollars for fabricating was for trusses; that the biggest part of the coal storage plant was little trusses and that they came out all knocked down, in small pieces; that the angle irons and other parts of steel that build up the trusses in question were disconnected from the trusses, and he had to rivet them together and build the trusses up; that if it came out as it should have come in one of those trusses, he would have probably twenty-five or thirty rivets to drive, and the two main sections of the trusses to put together; that when it comes knocked down, there must be pretty close to one hundred pieces in it; that that stuff has all got to be looked up and put together; that it increases the rivets at least three or four times as much as he would have to rivet if it had been shipped out as it was supposed to be shipped. Witness further testified that part of the steel for the ship shed was riveted and part of it was loose; that if it had all been knocked down, the charge for extra riveting and extra shop work would have been more than Eight Hundred Nineteen Dollars and Sixteen cents (\$819.16); that this amount

(Bill of Exceptions—Testimony of Otho Poole.)

was arrived at by Mr. Dean, keeping the time every day as the job went along; that witness got the information as to what trusses came knocked down and what came properly assembled from the plans.

Thereupon plaintiff offered in evidence a plan of the power house, ship repair and ship building plant of the Grand Trunk Pacific Railway, which plan was identified by the witness and was introduced in evidence and marked "Plaintiff's Exhibit B."

[illegible]



(Bill of Exceptions—Testimony of Otho Poole.)

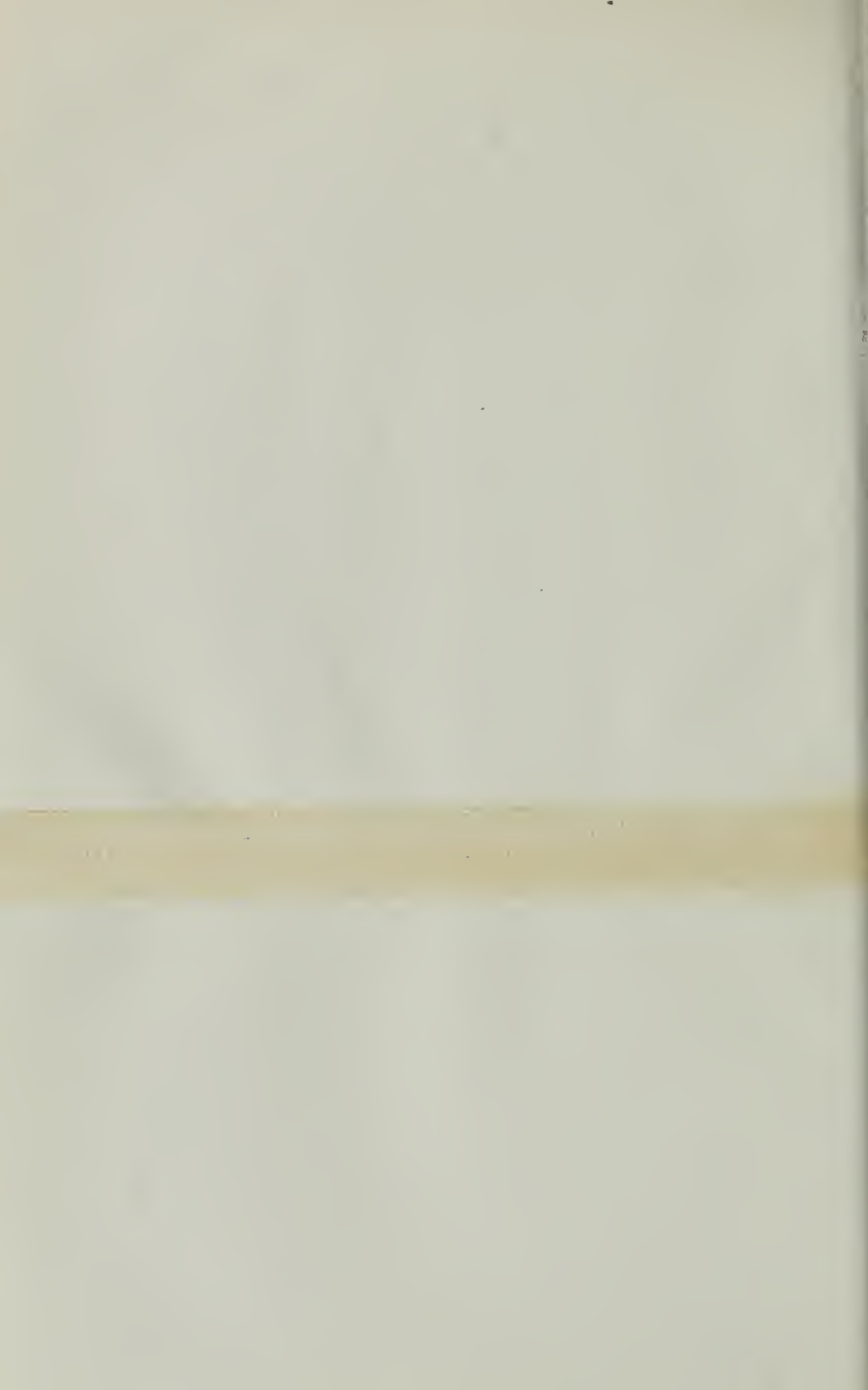
Thereupon witness further testified that he had seen other prints like said Plaintiff's Exhibit "B"; that said Plaintiff's Exhibit "B" showed a half section of one of the trusses that came knocked down, marked "X"; that the drawing marked "Y" was the truss after it is put together; that the white dots at the point marked "G" represent rivet holes, and the circles represent driven rivets; that the drawing shows by the markings, either by a solid circle or a ring, whether or not the rivet is to be driven or has been driven in the shop; that if this particular truss had come properly riveted, as he maintained, there would have been four different pieces of it to put together in the field; that according to this drawing the truss came in twenty pieces.

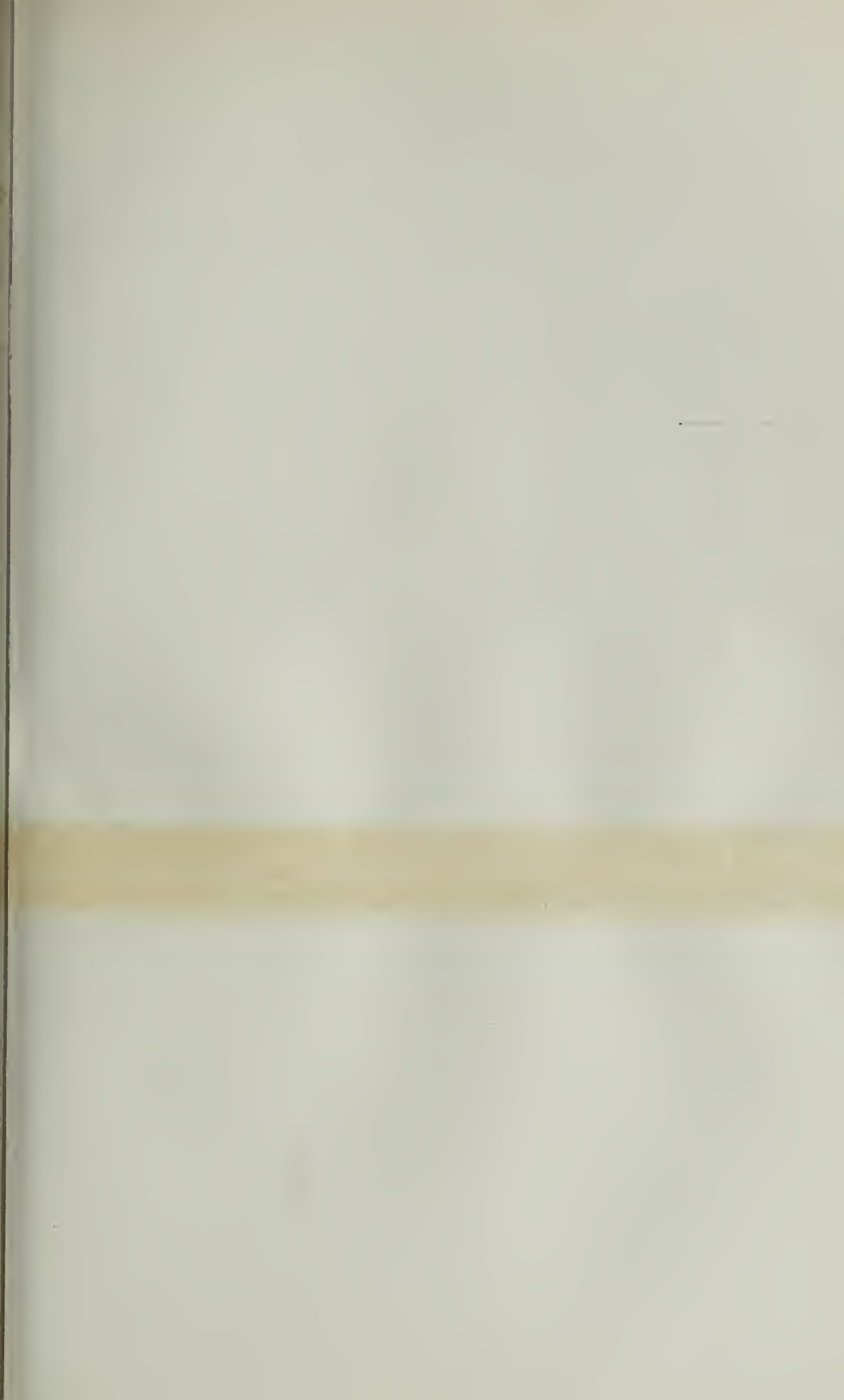
Witness further testified that the first time he saw the shop detail plans was when Mr. Dean got ready to go to Prince Rupert; that at that time he examined the shop detail plans for the blacksmith, the machine and boiler shops; that the item in the complaint of Five Hundred and Seventy-nine (\$579.00) Dollars, covering extra assembling work for the blacksmith, machine and boiler shops, was arrived at by keeping time every day; that the charge for extra assembling on the power house, Two Hundred Seven Dollars and Thirty-nine cents (\$207.39), and on the foundry building, Four Hundred Eighty-one Dollars and Fourteen cents (\$481.14), were arrived at in the same way.

(Bill of Exceptions—Testimony of Otho Poole.)

Witness further testified that a lot of the gusset plates on the columns on the trusses of the ship shed were shipped loose; that some of them came riveted on, and some of them came loose; that the biggest part of them were left off; that the ship shed contained the biggest part of these gusset plates.

Thereupon plaintiff offered in evidence a blue print, which was identified by witness, received in evidence and marked "Plaintiff's Exhibit C".





REQUIRED	
4	BOTTOM CHORDS
4	"
4	"
20	GUSSET PLATES
20	"
5	LAT. CHORDS
5	"

TRUSSES

SHIP REPAIR & SHEDDING
Grand Trunk Pk. for 1911



(Bill of Exceptions—Testimony of Otho Poole.)

Witness further testified that the drawing marked "X" on said Plaintiff's Exhibit "C" was a gusset plate; that this gusset plate was riveted on as it should have been riveted; that most of the gusset plates came out not riveted up like this one; that those unriveted gusset plates came out on the ship shed.

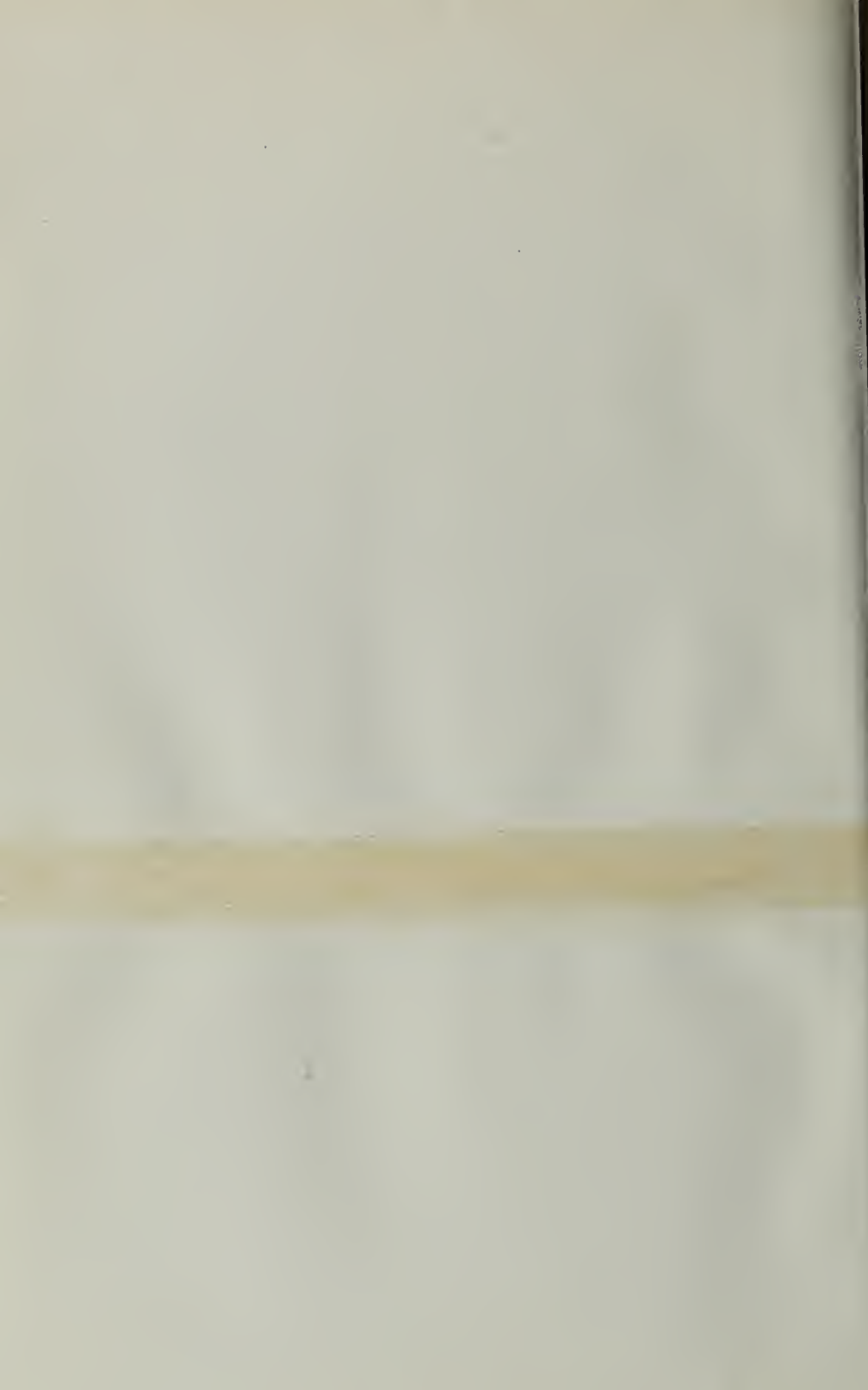
Thereupon plaintiff offered in evidence a blue print, which was identified by witness, received in evidence and marked "Plaintiff's Exhibit D".

(Bill of Exceptions—Testimony of Otho Poole.)

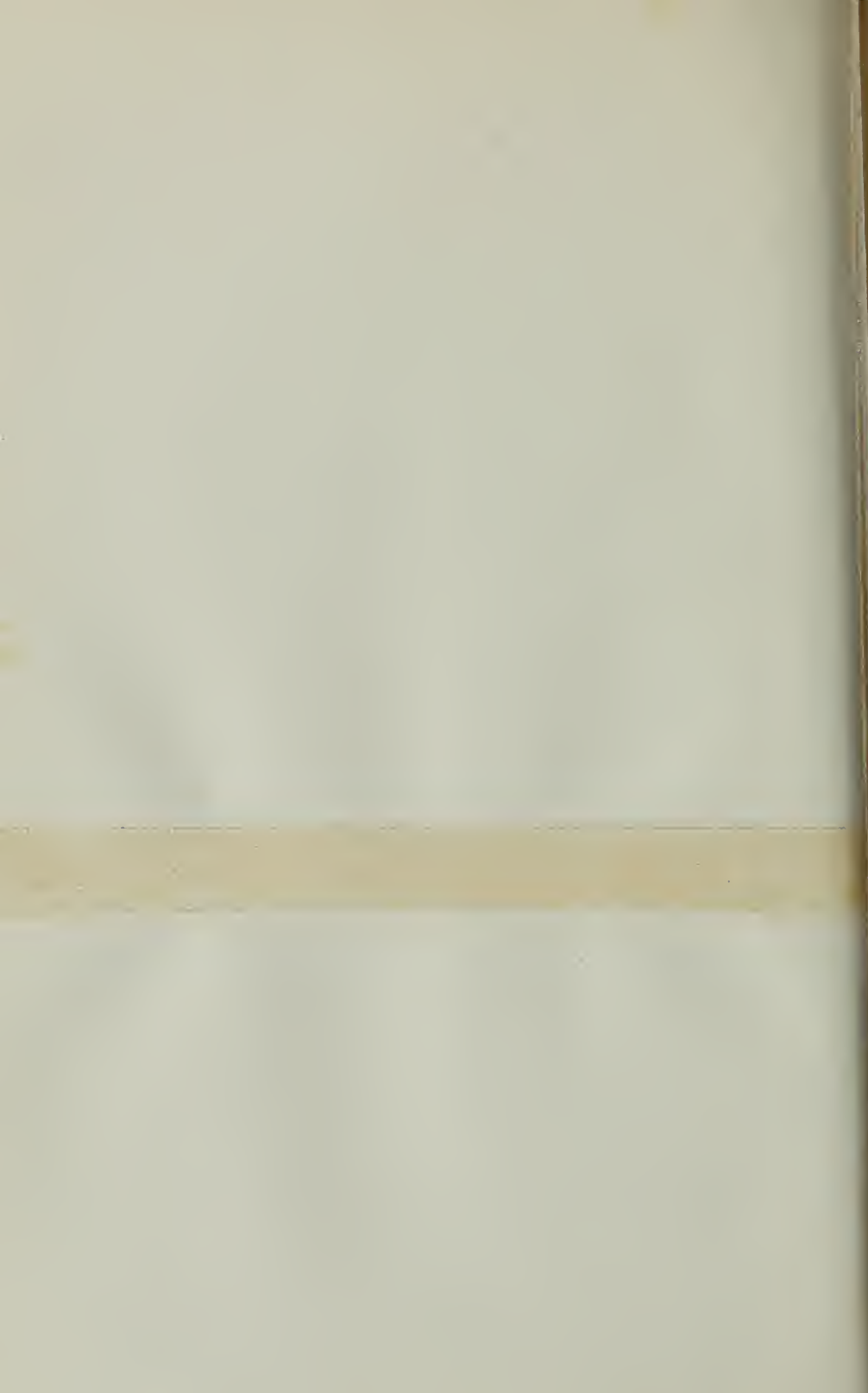
Witness further testified that it was a gusset plate shown on said Plaintiff's Exhibit "D," marked "M," and that it was shipped loose; that this gusset plate "M" was a small gusset plate that is supposed to be driven in the shop.

Witness further testified that he did not know why the shop detail plans showed one gusset plate, marked "X" on Plaintiff's Exhibit "C," riveted in the shop, and the other, marked "M" on Plaintiff's Exhibit "D," to be driven in the field.

Thereupon plaintiff offered in evidence two blue prints, which were identified by the witness, received in evidence and marked "Plaintiff's Exhibit E" and "Plaintiff's Exhibit F".







(Bill of Exceptions—Testimony of Otho Poole.)

Witness further testified that said Plaintiff's Exhibit "E" was a blue print of a piece of crane-run extension, what he termed a column, for the runway for the crane in the ship shed; that it was sent out knocked down, that he arrived at that conclusion from the way the rivets are shown at the point marked "A"; that the piece of steel work should have been assembled in the shop and the rivets driven at the point marked "A" before shipment.

Witness further testified that at the time he and the defendant entered into their contract, Mr. Overmire assured him that they would rivet everything in the shop, that is, the stuff would be as completely riveted up in the shop as they could rivet it.

Witness further testified that the blue print, marked "Plaintiff's Exhibit F," was the top section of one of these same columns; that it is completely riveted up, whereas the bottom part of the column, as shown in Plaintiff's Exhibit "E," is not completely riveted up; that the piece of steel shown on Plaintiff's Exhibit "F" was shipped the way witness expected it.

Witness further testified that he took up with Mr. Overmire the question of the steel arriving at Prince Rupert without, as he claimed, all of the shop work being done, the first time when they were figuring the work; that at that time witness saw the engineer's plans, not this set of plans or a dupli-

(Bill of Exceptions—Testimony of Otho Poole.)

cate thereof; that the engineer's plans do not show how the steel would arrive, but show an outline truss; that he cannot recall everything that was on the plans, but that they show the size of angles, plates, and things like that; that, as a general rule, they do not show any rivets or how the steel will be shipped; that when Mr. Dean got ready to go to Prince Rupert, witness turned the plans over to him, and Mr. Dean discovered that the stuff was knocked down; that they went up to see Mr. Overmire; and that Mr. Overmire gave him written instructions which led him to send Mr. Dean up to Prince Rupert.

Thereupon plaintiff offered in evidence certain letters, which were identified by the witness, received in evidence and marked "Plaintiff's Exhibit "G," and "H," which are as follows:

(Plaintiff's Exhibit "G")

"UNITED STATES STEEL PRODUCTS COMPANY,
PACIFIC COAST DEPARTMENT.

Portland, Oregon, March 24, 1913.

Subject: XAB-3283-85 incl.

Prince Rupert Buildings.

Messrs. Poole-Dean Co.,

Portland, Oregon.

Gentlemen:

Referring to your conversation with our Mr.

(Bill of Exceptions—Plaintiff's Exhibit "G.")

Overmire and the writer relative to your contract covering erection feature for the Grand Trunk Pacific Buildings at Prince Rupert, B. C., it is understood that we used your figures in connection with our proposal on this work, and consequently you will receive the order for doing this erection.

As to the deliveries, wish to advise that our schedule contemplates commencing shipment from the plant in June and complete about the middle of September, but we undoubtedly will have to figure about four to four and one-half months from the time material leaves the plant until it reaches Prince Rupert.

Our formal contract with you for the erection will be drawn up as soon as conditions permit.

Trusting this letter will give you the necessary authority for making your arrangements for your part of the work, we remain,

Very truly yours,

BRIDGE AND STRUCTURAL DEPARTMENT,

C. C. Overmire,

Contracting Manager.

By Frank E. Fey,

Contracting Agent.

F-C

Cy to W. H. Stratton."

(Plaintiff's Exhibit "H")

"UNITED STATES STEEL PRODUCTS COMPANY,
PACIFIC COAST DEPARTMENT.

Subject: XAB—3281-86 incl.

Grand Trunk Railway System.

Portland, Oregon, May 3, 1913.

Messrs. Poole-Dean Co.,
Portland, Oregon.

Gentlemen:

Referring to the Prince Rupert work, I would advise you that we expect to ship all of the material for the buildings on a steamer leaving New York about the middle of August.

The steel for the dry dock will leave New York on a steamer sailing between the first and 15th of October. This means there will be two shipments of material from New York, instead of three as originally contemplated.

We are giving you this information so that you may make the necessary arrangements; and I have also notified Mr. Donnelly of these facts, in order that the contractors who are preparing the foundations, etc., may have their work ready in time.

You of course appreciate the fact that it will take 90 to 100 days for the steamer to reach Prince Rupert after sailing from New York; but it might be well for you to get in touch with Mr. Pillsbury or Stirrat & Goetz's representative at Prince Rupert

(Bill of Exceptions—Plaintiff's Exhibit "H.")

and ascertain the condition of the site at the present time, and also as to their anticipated progress.

Very truly yours,

BRIDGE AND STRUCTURAL DEPARTMENT,

C. C. Overmire,

CCO-C

Contracting Manager."

Witness further testified that the contract between Poole-Dean Company and United States Steel Products Company, referred to in said Plaintiff's Exhibit "G," was never drawn up; that the reference in said Plaintiff's Exhibit "H" to the effect that the material would leave the East by boat was the first that witness knew how it was coming.

Witness further testified that he sent Mr. Dean up in November, 1913; that he shipped his equipment, consisting of tools, compressors, engines, derricks, and all the stuff that he used; that Mr. Dean began erecting steel some time in December, 1913; that the steel came by water; that he kept a crew up there until he was tied up for the pontoons.

Witness further testified, in explaining plaintiff's second cause of action for delay and for the reasonable rental of the equipment, that the usual rental on stuff of that kind is ten per cent of what it cost, and that he billed for that for two months.

Thereupon defendant objected to any evidence concerning measure of damages for delay beyond the legal rate of six per cent per year on the value of

(Bill of Exceptions—Testimony of Otho Poole.)

the property, upon the ground that damages for withholding property for any length of time should be ascertained by estimating the value of the property and giving the legal rate of interest for the time plaintiff was deprived of the use of such property, and that the reasonable rate of interest would be six per cent per annum.

Thereupon the Court sustained the objection of the defendant and ruled that the plaintiff should be limited, in proving plaintiff's damages for delay, to six per cent per annum, or the legal rate of interest in Canada, and to this ruling of the Court the plaintiff excepted and said exception was allowed.

Witness further testified that the value of the equipment he had tied up from September to November, 1914, was approximately Ten Thousand Six Hundred Eighteen Dollars and Nineteen Cents (\$10,618.19); that the claim for Nine Hundred and Eighteen Dollars (\$918.00), contained in plaintiff's third cause of action, was for shipping eighteen (18) men from Prince Rupert to Vancouver, for their transportation and traveling time.

Witness further testified that there was an agreement between plaintiff and defendant that plaintiff would not have to shut down, that is, any expense which was caused if he had to shut down, he was led to believe he would be reimbursed for; that he notified Mr. Overmire three months before he would have to shut down and told him what expense he would be put to, and expected to be reim-

(Bill of Exceptions—Testimony of Otho Poole.)

bursed for this expense; that he explained to Mr. Overmire when he figured the job that he would have to get all his men in Vancouver; that it was necessary for him to shut down because the pontoons were not ready to go ahead with the work.

Witness further testified, referring to plaintiff's fourth cause of action for Twenty-four Hundred and Fifty-nine Dollars (\$2459.00), on account of moving the material and extra handling, that Mr. Overmire said that he would furnish all the space plaintiff needed; that witness spoke to Mr. Overmire before taking Mr. Dean up there about writing this contract, that all these things might come up, and that was why witness wanted a written contract; that Mr. Overmire said, "You need not worry about that. We have taken care of that in our proposal to the Grand Trunk Company"; that the stuff was supposed to be delivered to him on the dock with the space that he needed for handling the material; that when he got up there, this stuff was unloaded and piled on the dock, and when he went back to start the job, lumber and stuff were piled around; that when he started the job, riveting frames for the pontoons, there was not room enough on the dock to handle the frames as they were riveted up; that he had to have a barge to take that stuff away on account of shortage of space; that the items of Twenty-four Hundred and Fifty-nine Dollars (\$2459.00) covered the extra handling of the steel that was put into the pontoons, that is all the same

(Bill of Exceptions—Testimony of Otho Poole.)

thing as the dry dock which is on the pontoons; that Mr. Overmire paid for handling the extra steel for the buildings before witness started the dry docks.

Witness further testified that he had an estimated cost of this item of Twenty-four Hundred Fifty-nine Dollars (\$2459.00); that he had to get the plates that went on one particular part of the job out, then pile the rest on top of some of the other stuff, and then when he had to get at the other stuff, he had to move it back; that he had about one-quarter of the space he needed for handling the job; that his estimated cost on the job was ninety cents (90c) a ton, it cost something over Five Thousand Dollars (\$5000.00); that witness could not recall the figures; that he billed defendant for One Dollar (\$1.00) a ton, that is, it was about Seven Hundred Dollars (\$700.00) over and above his estimated cost that he had allowed himself.

Witness further testified that he took up the claim for space with the defendant by letter, and explained to him how he arrived at these figures when he sent them the bill.

Plaintiff thereupon offered in evidence a certain letter, dated November 10, 1915, to the introduction of which defendant objected upon the ground that plaintiff was seeking the wrong method of establishing damages; that plaintiff was giving what they estimated the work would cost, then saying what it actually did cost and putting the amount of damages at the difference between the two; that the

(Bill of Exceptions—Testimony of Otho Poole.)

proper measure of damages would be the reasonable value or cost of moving the stuff, not what plaintiff may have paid or what it may have cost them.

Thereupon the Court overruled the objection of the defendant and admitted said letter in evidence, and to this ruling of the Court defendant excepted and the said exception was allowed, and said letter was admitted in evidence and marked "Plaintiff's Exhibit I," which is as follows:

(Plaintiff's Exhibit "I")

"POOLE-DEAN COMPANY,
Portland, Oregon.

10 November, 1915.

United States Steel Products Company,
Portland, Oregon.

Gentlemen:

GRAND TRUNK PACIFIC DRYDOCK,
PRINCE RUPERT, BRITISH COLUMBIA.

Referring to telephone conversation, today, between your Mr. Fay and the writer, regarding the charge for the rehandling of Dry Dock Material; we wish to say, that the total cost of handling and sorting the Dry Dock Material on the dock was \$5,429.32.

This high cost of handling and sorting the dry dock material was due to the crowded condition of the dock. We did not have more than one-fourth the

(Bill of Exceptions—Plaintiff's Exhibit "I.")

space we needed, and this necessitated the handling and rehandling of the same pieces many times.

Our estimated cost of handling and assorting was \$0.90 the ton, which for 2,459 tons equals \$2,213.10, leaving a difference of \$3,216.22. We have billed you for \$2,459.00 of this extra expense, and we have absorbed the remainder of \$757.22.

You have a representative on the ground who can explain the crowded conditions under which we worked.

We cannot understand why the explaining of this extra charge should delay the payment of what is due us on the original contract. We shipped about 20 extra men from Vancouver to Prince Rupert, at our own expense, in order to rush this work, and we finished the work about five weeks ahead of time, and the work has now been completed about four months and we have not been paid for it. We do not think that we are getting fair treatment, and we would like to know definitely just when we are going to get our money. An early reply will be greatly appreciated.

Yours very truly,

POOLE-DEAN COMPANY,

By Otho Poole,

President."

O.P/R

Witness further testified that he had been engaged in the contracting business, structural steel

(Bill of Exceptions—Testimony of Otho Poole.)

erection, for himself since 1911; that prior to that time he had charge of work for Smith-Rice Company since 1907; that he was familiar with charges for handling steel work on the job; that his charge here was based upon what he knew the stuff to be worth to handle under ordinary conditions, conditions that he was promised, that that was what the ninety cents (90c) a ton was based on; that there was a reasonable profit in that ninety cents (90c) a ton if he had had the space to handle the stuff; that the seven hundred and some odd dollars that he sued for here was not the profit, but was part of that extra cost; that he stood that part of the extra cost himself; that the Three Thousand Two Hundred Sixteen Dollars and Twenty-two cents (\$3,216.22), based upon a reasonable profit, was the extra cost for handling and that he only billed defendant for Twenty-four Hundred and Fifty-nine Dollars (\$2459.00); that he had absorbed enough there so that there could not be any claim by defendant that he should have stood some of it himself; that, according to his experience, he would say that the charge which he had made for this extra handling was a reasonable one.

Witness further testified, referring to the fifth cause of action for Four Hundred Dollars and Seventy cents (\$400.70), that it covered extra work which he did in connection with that work and billed the United States Steel Products Company for; that these bills were all checked up and O.K.'d

(Bill of Exceptions—Testimony of Otho Poole.)

after the work was done, and that the amount was agreed upon; that these charges were taken up with him after the work was done, and that he went over it with Mr. Fey, and that it was all satisfactory; that he did not recall who ordered this extra work; that he was not on the job, but that Mr. Dean was; that he had an understanding with Mr. Overmire that any of that work that came up, that he would go ahead and do, and that then they would thresh it out afterwards; that in erecting that stuff, little things come up that must be fixed right away, some shop mistake or something like that; that he generally does them and then settles up afterwards; that all agreed that the price was all right.

Witness further testified that some time after this bill was sent to defendant, Mr. Fey took it up with the witness and wanted to know if the witness would bill the Grand Trunk Company for it; that he billed the Grand Trunk Pacific for this amount because Mr. Fey wrote him a letter and asked him to.

Thereupon plaintiff offered in evidence a letter, which was identified by the witness, received in evidence and marked "Plaintiff's Exhibit J."

(Plaintiff's Exhibit "J")

"POOLE-DEAN COMPANY,
Portland, Oregon.

17th November, 1915.

United States Steel Products Company,
Portland, Oregon.

Gentlemen :

GRAND TRUNK PACIFIC DRY DOCK,
PRINCE RUPERT, B. C.

Referring to your letter of November 11th, regarding bills for extra work, it was never understood by us that these bills should be paid by the Grand Trunk Pacific Development Company, as this work was done in accordance with your orders; and we shall expect you to make settlement for same.

However, in accordance with your request, contained in this letter, we are today mailing the Grand Trunk Pacific Development Company copies of the itemized bills, as follows:

April account	\$129.60
May and June accounts.....	150.30
July account	102.15
1200 rivets for float frames.....	17.50
Freight on rivets.....	1.15

Amounting to\$400.70

As soon as we receive payment for the above, we shall turn it over to you.

This transaction in no way relieves you from

(Bill of Exceptions—Plaintiff's Exhibit "J.")

settlement of these bills, all of which are now four months or more overdue.

Very truly yours,

POOLE-DEAN COMPANY,

By Charles McGonigle.

CMcG/H

Encs.

Witness further testified that after Mr. Dean went to Prince Rupert and the steel arrived, he was notified by wire sent from Mr. Overmire.

Thereupon plaintiff offered in evidence a telegram, which was identified by the witness, received in evidence and marked "Plaintiff's Exhibit K."

(Plaintiff's Exhibit "K")

"GOVERNMENT TELEGRAPH SERVICE.

Department of Public Works.

Dominion of Canada.

44hge 68 NL

Portland, Ogn, Nov 29-13

C. O. Dean,

Central Hotel,

Prince Rupert, B. C., Canada.

Pillsbury's message rec'd princerupert steamer will unload on dock your contract states you will receive material on wharf which means as steamer delivers. Am leaving for New York tonight will have steele see poole and wire me in any event you must handle material as steamer unloads will ar-

(Bill of Exceptions—Plaintiff's Exhibit "K.")

range details with poole which shall be satisfactory to all parties concerned will wire later regarding signing ships papers receipt steel.

1015pm.

C. C. OVERMIRE."

Witness further testified that after this wire was received he refused to handle the steel; that he told Mr. Steele, Contracting Agent for the United States Steel Products Company, that it was not in his contract.

Thereupon plaintiff offered in evidence a letter dated December 2, 1913, which was identified by the witness, and to which defendant objected on the ground that it was incompetent, irrelevant, and immaterial, inasmuch as it did not concern any of the issues made by the pleadings, there being no charge in the complaint for the matter concerned or damages predicated upon it.

Thereupon the Court overruled the objection of the defendant and admitted said letter in evidence, and to this ruling of the Court defendant excepted and said exception was allowed, and said letter was received in evidence and marked "Plaintiff's Exhibit L."

(Plaintiff's Exhibit "L")

"UNITED STATES STEEL PRODUCTS COMPANY,
PACIFIC COAST DEPARTMENT.

Portland, Oregon, December 2, 1913.

Subject: Prince Rupert Work.

Messrs. Poole-Dean Co.,

Portland, Oregon.

Gentlemen:

This will authorize you to receive the material which is now being unloaded at Prince Rupert from the ships' tackles.

It is understood that the details for extra charges on this account are to be arranged between you and Mr. Overmire upon his return from the East.

Very truly yours,

BRIDGE AND STRUCTURAL DEPARTMENT,

C. C. Overmire,

By C. W. Steele,

Contracting Manager.

Contracting Agent.

CWS-C

Cy to C. C. Overmire.

W. H. Stratton."

Thereupon defendant objected to any evidence concerning Plaintiff's Exhibit "L," upon the ground that it was incompetent, irrelevant, and immaterial, inasmuch as it did not concern any of the issues made by the pleadings, there being no charge in the complaint for the matter concerned or damages

(Bill of Exceptions—Testimony of Otho Poole.)

predicated upon it. Thereupon the Court overruled the objection of the defendant, and to this ruling of the Court the defendant excepted and said exception was allowed. The witness, however, offered no further testimony in this regard.

(Cross-Examination of Otho Poole for Plaintiff)

Upon cross-examination, the witness testified that the Grand Trunk Pacific Development Company, to whom he sent the bill for Four Hundred Dollars and Seventy cents (\$400.70) never sent him any money for it. The witness was then asked whether the Grand Trunk Pacific Development Company did not give him credit for what he owed them to that amount. To this question plaintiff objected as incompetent, irrelevant, and immaterial, upon the ground that the matter was between the United States Steel Products Company and the Grand Trunk Pacific Development Company.

Thereupon the Court overruled the objection, and to this ruling of the Court the plaintiff excepted and said exception was allowed.

Thereupon, in response to the question previously asked, witness testified that he did not know what became of the bill after he sent it to the Grand Trunk Development Company; that Mr. McGonigle handled that; that plaintiff owed the Grand Trunk Development Company some money, more than Four Hundred Dollars (\$400.00); that witness did not know whether the Grand Trunk Development Com-

(Bill of Exceptions—Testimony of Otho Poole.)

pany gave plaintiff credit for that amount, on what plaintiff owed them or not; that witness thought they wrote Mr. McGonigle a letter saying that they would give plaintiff credit for that amount, and that Mr. McGonigle wrote them back another amount; that witness did not know just how they did adjust that, nor just what the final outcome was.

Witness further testified that when he first went up to Prince Rupert with Mr. Overmire, there was mostly water on the ground; that they had just started the dock; that they saw the plans and specifications after they got there, in Pillsbury's office; that witness and Mr. Overmire had the plans together, and Mr. Overmire read the specifications over; that he expected to do the work according to the specifications but there was a lot of stuff they didn't include, that Mr. Overmire said he wasn't going to include, and that witness just gave him figures on certain portions of it; that witness did not figure the job according to specifications; that he figured it subject to the acceptance of the engineer; that if he had figured it according to the specifications, he would have included everything that was in them.

Witness further testified that he knew that everything was to be done under the supervision of Frank E. Kirby or William T. Donnelly, or their authorized representative, but that witness was not under them; that witness was working under the

(Bill of Exceptions—Testimony of Otho Poole.)

United States Steel Products Company; that witness knew he had to do the work under the men on the ground for Frank E. Kirby or William T. Donnelly, that is, an inspector; that the inspector could not direct witness, that witness took no orders from the inspector whatsoever; that the inspector transmitted his orders to Mr. Overmire, and that witness got his orders from Mr. Overmire; that the inspector had the right to direct Mr. Overmire to direct the witness how the work should be done; that witness knew what work he did under his instructions had to be done according to the inspector's directions.

Witness further testified that he understood the Grand Trunk Development Company were to build the pontoons themselves; that he did not understand that the United States Steel Products Company was to build them; that witness understood that the Grand Trunk Development Company was to furnish the pontoons to the United States Steel Products Company, and that the United States Steel Products Company was to furnish them to witness.

Witness further testified that he understood that the work on the dry dock was supposed to commence in May; that when he figured the job, it was figured that the pontoons would be ready about the first of May; that the contract witness made provided that he should start whenever Mr. Overmire ordered him to; that the contract, upon which

(Bill of Exceptions—Testimony of Otho Poole.)

Mr. Overmire was figuring, provided that witness should start work on the pontoons when three pontoons were delivered by the Grand Trunk, and that the work on the dry dock was not to commence until the Grand Trunk Development Company should furnish three pontoons.

Witness further testified that he could not recall whether he read the specifications or heard them read; that he and Mr. Overmire had the specifications up there, and that witness supposed he must have read them; that he remembered the three pontoons part; that he never paid any particular attention to it; that he was not governed by the paragraph in the specifications providing how the work on the dry dock should be carried on at all; that he was governed by a contract he had with Mr. Overmire; that at that time Mr. Overmire had no contract with the Grand Trunk Development Company.

Witness further testified that he and Mr. Overmire went up there and got the specifications and plans to see what kind of work had to be done; that witness figured on erecting this stuff and riveting it for Mr. Overmire; that he does not need any specifications to do that class of work; that he has done enough of it to know what has got to be done, what is expected; that he went with Mr. Overmire to get the plans in order to figure the job; that he did not know what part of the work he would include when he went up there; that when he got

(Bill of Exceptions—Testimony of Otho Poole.)

the plans, he found out how much work he had to do from examining it; that he found out about the pontoons by examining the specifications; that he found out the details of the work from examining the specifications; that he could not tell how many trusses there were without looking at the plans and specifications; that he could tell by looking at the plans, but not at the specifications; that after examining the plans, he could tell exactly how much work he had to do; that he could not tell when he was to do his work after examining the plans and specifications; that he did not figure starting by the specifications at all; that Mr. Overmire was supposed to notify him when to start; that he did not know when the job was going to start; that the specifications were not ready for six months after they were supposed to be ready.

Witness further testified that the plans are drawings, and the specifications are written; that some things are mentioned in the specifications that are not shown on the plans; that both plans and specifications are not necessary in order to bid on a job unless everything in the contract is taken; that steel work can be figured from the plans alone, not from the specifications alone; that the specifications cover things not shown in the plans; that the matter of painting would be covered by the specifications.

Witness further testified that he undertook to paint part of the job, but not the whole of it, only

(Bill of Exceptions—Testimony of Otho Poole.)

the buildings; that he put some paint on the dry dock which he got paid extra for that was not part of his contract; that Mr. Overmire read the specifications over and said, "Certain things we will include, and certain things we won't include. You give me a figure on erecting and riveting this dry dock only"; that witness figured on erecting and riveting only; that he figured on furnishing the compressor, but not like the one specified; that he knew the specifications called for a compressor, and for a bigger one than witness had; that he did not read the specifications, that Mr. Overmire read them; that witness heard them read.

Witness further testified that he was concerned with the boiler, machine and blacksmith shop, the power house, the foundry, the ship shed, and the coal storage buildings, as well as the dry dock; that he was figuring on putting up only the steel work of these buildings; that there were two or three different contractors on the rest of the work; that he understood that the steel work could not be done until after the other work, the foundations, which the other contractors had to do, had been done.

Witness further testified that when he went up there the first time, the engineer, Mr. Pillsbury, pointed out where the docks would be built, that is, as near as he could; that at that time the whole place was covered with water, except a little dock.

Witness further testified that Mr. Oevrmire said that they would rivet everything in the shop that

(Bill of Exceptions—Testimony of Otho Poole.)

they could rivet; that he said he didn't know how this stuff would come; that he said, "We don't know how they will ship it. It may come to Vancouver and up by car-ferry, or it may come to Vancouver and up by barge."

Witness further testified that, as concerns the steel which he had handled, there had never been any difference in the way in which it was fabricated in the shop when it was shipped by water and when shipped by rail; that he has handled steel shipped by water from New York to Portland, Oregon; that that steel was trusses for the Lincoln High School; that they were bigger than any of the ones in this case; that they were furnished by Milliken Brothers; that those trusses came broken in the center, just as witness had explained the ones in this case should have been; that those trusses were too long to ship; that witness had done the freight shed for the O. W. R. & N. Company, the steel for which had been shipped from New York to New Orleans by water and from there by rail; that the specifications for the work on the Lincoln High School were prepared in Portland, Oregon; that he did not see the specifications before he bid on the Lincoln High School; that he bid on the Lincoln High School just from the steel plans, the engineer's or architect's plans; that the specifications do not show whether the trusses will come riveted together or not; that these plans are gotten out, and that witness knows how that stuff is coming.

(Bill of Exceptions—Testimony of Otho Poole.)

Witness further testified that Mr. Overmire said, "We will rivet everything in the shop that we can"; that Mr. Overmire did not tell him that the stuff would be riveted up or fabricated and shipped in the manner customary for that class of work.

Thereupon defendant offered in evidence a letter dated September 11, 1914, which was identified by the witness, and which letter was received in evidence and marked "Defendant's Exhibit 1," which is as follows:

(Defendant's Exhibit 1)

"POOLE-DEAN COMPANY,
Portland, Oregon.

11 September, 1914.

United States Steel Products Company,
Portland, Oregon.

Gentlemen:

Referring to:

GRAND TRUNK PACIFIC TERMINALS—
PRINCE RUPERT, BRITISH COLUMBIA.

We are handing you, herewith, bills for extra field work amounting to \$3,330.69, due to our being compelled to perform work in the field which it is customary to have done in the shop. These charges are the actual costs of labor and insurance, and does not include any charges for administration, tools, coal, etc.

When we made the proposal for this work we

(Bill of Exceptions—Defendant's Exhibit 1.)

were advised by your Mr. Overmire, that all of the material would be fabricated and shipped in the manner customary for this class of work. As you are aware, it is customary to ship material of this character mostly riveted together, and not "knocked down."

Our proposal was to erect, rivet and paint this work, which proposal was accepted by you. There was no mention of any field assembling or riveting which is ordinarily done in the shops. Before we started this work we took the matter up with Mr. Overmire and advised him that we would do the work, keep accurate charge of it, and bill you for it as soon as it was completed.

The writer has had charge of the erection of all classes of steel work along the Pacific Coast for the past eight years, much of which was mill building work of a character similar to these buildings, and had been shipped by water from New York, and in no case was the material shipped "knocked down" unless special mention was made of it before the contract was signed.

There was considerable time between the original proposal and the time the work started, and it was your duty to advise us if you intended to ship the material in any other manner than the customary manner.

Yours very truly,

POOLE-DEAN COMPANY,

By Otho Poole."

O.P/B

(Bill of Exceptions—Defendant's Exhibit 2.)

Thereupon defendant offered in evidence a letter dated November 7, 1913, which was identified by the witness, received in evidence and marked "Defendant's Exhibit 2," and which letter is as follows:

(Defendant's Exhibit 2)

"POOLE-DEAN COMPANY,
Portland, Oregon.

November 7th, 1913.

U. S. Steel Products Co.,
City.

Gentlemen:

In looking through our files we find that we have misplaced copies of our original proposals on the main buildings and wings of the dry dock at Prince Rupert.

It is our understanding we are to erect, rivet and paint two coats on main buildings for \$18.00 per ton of 2000[#]; on wings of dry dock we are to erect, rivet and caulk for \$18.00 per ton of 2000[#], all material to be delivered to us on dock at building site.

If the above is in accordance with your understanding we will ask that you confirm same at your earliest convenience in order that our records may be complete. Thanking you in advance, we are

Yours very truly,

POOLE-DEAN COMPANY,

OP/AWH

Per Otho Poole."

(Bill of Exceptions—Defendant's Exhibit 3.)

Thereupon defendant offered in evidence a letter dated November 11, 1913, which was identified by the witness, received in evidence and marked "Defendant's Exhibit 3," and which letter is as follows:

(Defendant's Exhibit 3)

"UNITED STATES STEEL PRODUCTS COMPANY,
PACIFIC COAST DEPARTMENT.
Portland, Oregon.

November 11, 1913.

Subject: Prince Rupert Buildings.

Messrs. Poole-Dean Co.,
Portland, Oregon.

Gentlemen:

We have your letter of the 7th instant which states that you have misplaced copies of your original proposal on the buildings and wings of the Dry Dock on the above subject.

Your understanding is, in accordance with ours that: you are to haul, erect and rivet the steel for the buildings, for Eighteen Dollars (\$18.00) per net ton of 2000#, which includes your furnishing and applying two coats of paint, as per specifications; also that you are to haul, erect, rivet and caulk the steel work for the wings of the Dry Dock, for Eighteen Dollars (\$18.00) per net ton of 2000#.

(Bill of Exceptions—Defendant's Exhibit 3.)

All steel work to be delivered to you on dock at Prince Rupert, B. C.

Very truly yours,

BRIDGE AND STRUCTURAL DEPARTMENT,

C. C. Overmire,
Contracting Manager.

By Frank E. Fey,
Contracting Agent.

F-C

Cy to W. H. Stratton."

Witness further testified that the plans prepared by Milliken Bros. upon the Lincoln High School were really shop details; but the ones he figured from were not prepared by Milliken Bros., but were just the same as the plans in this case; that witness did not remember whether he figured the freight shed from shop details or not; that the railroad company sometimes get out their own plans; that there might have been some shop details out on that.

Witness further testified that when he was up at Prince Rupert with Mr. Overmire, he didn't do any talking, that Mr. Overmire did the talking himself; that witness heard Pillsbury talk and that he knew that the defendant was not to furnish the docks, and had nothing to do with furnishing the docks; that there was a discussion between Mr. Overmire, Pillsbury and the witness at that time as to where wit-

(Bill of Exceptions—Testimony of Otho Poole.)

ness would store this stuff, taht Mr. Overmire asked the witness about how much space he would want; that witness explained to Mr. Overmire, and then Mr. Overmire took it up with Pillsbury, and Pillsbury informed Mr. Overmire that he could have all the space that he needed; that witness was present at that conversation; that he understood Pillsbury, the people he represented, were to furnish the space for storing the stuff, for the steel and handling it on the dock.

Witness further testified that with his understanding with Mr. Overmire, witness was to handle the steel after it was landed at the dock; that Pillsbury told Mr. Overmire that Mr. Overmire could have the space; that witness did not rely upon that statement; that Mr. Overmire was under obligation to witness to furnish that space, because witness took that up with him before he shipped men up; that witness said, "I don't want to send men or equipment up there until this thing is in writing"; that Mr. Overmire said, "Everything will be all right. I protected you in my proposal to the Grand Trunk Development Company."

Witness further testified that he and Mr. Overmire went up there to get the plans; that witness went up after the job was started; that when he and Mr. Overmire went up there they went over the plans and things like that and discussed the whole situation; that witness did not know exactly where each building was to be put, knew approxi-

(Bill of Exceptions—Testimony of Otho Poole.)

mately where they were supposed to be; that he got the dimensions from the plans; that he did not know just how much there would be of the dock and all he heard was what Pillsbury told him; that Pillsbury pointed out about where the dock would run.

Witness further testified that the first shop detail plan he saw was when Mr. Dean was going to Prince Rupert to start the job; that he had received some of the plans long before that, but they came in a bundle and he laid them by; that he never had any occasion to use them; that when Mr. Dean got ready to go up there, he got the plans down to take up with him and that was the first that the witness remembered of seeing the plans; that these plans contained the shop details; that he did not know just how long he had had them since they had been delivered to him; that these plans comprised some of the buildings, that he did not get all of the plans until after he had started the job; that he could look up and find out, when he got them, but he could not remember now just when he got them.

Witness further testified that he got the plans that Dean had before November 7, 1913; that when he examined those plans that Dean had was the first he discovered that the steel was not riveted up as much as he expected it to be; that he had those plans when he wrote the letter of November 7, 1913 (Defendant's Exhibit 2); that he must have had some of the plans at that time although he did

(Bill of Exceptions—Testimony of Otho Poole.)

not know just what plans he had; that he thought he had some of these shop detail plans at that time; that he thought the letter of November 7, 1913 (Defendant's Exhibit 2), was written before Mr. Dean started up there, but he was not positive.

Witness further testified that he could not say what the object was for leaving off the gusset plate on one of the shop details and riveting it on the the other (Plaintiff's Exhibits "C" and "D"), unless it was to save freight, that is, it would not take up so much room in the boat; that there is just as much danger of gusset plates and connections being broken off from the main columns when shipped by rail as there is by water, that even hauling them on the job they are broken and bent; that it has been witness' experience that, if it is put in the boat properly, it will not get bent any worse than it will by rail.

Witness further testified that most of the trusses that came knocked down were about forty (40) and fifty (50) feet long, very small trusses, and approximately six (6) or seven (7) feet deep at the biggest point; that in trusses of that size, the size of the truss would make no difference as to getting them all riveted to go in the boat or not; that the hatches on the boat are so big that they can take care of anything like that; that they can handle practically anything in a boat that they can handle by ordinary cars, according to witness' experience, on stuff that he has handled.

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(Bill of Exceptions—Testimony of Otho Poole.)

Witness further testified that he did not know that defendant was going to ship by water until Mr. Overmire notified him; referring to the letter from Mr. Overmire, May 3, 1913, (Plaintiff's Exhibit "H"), that witness did not know whether it was that letter or another one which first notified him that the steel was coming by water; that every time he would see Mr. Overmire there would be something that came up about that job.

Witness further testified that he never received a written contract; that Mr. Fey called him up to defendant's office one day to look over a contract that was drawn up, and that witness never heard anything more from it; that witness read it over and neither approved nor disapproved it, but was waiting for it; that Mr. Fey had to send it back to New York; that witness suggested some changes, but did not know whether the changes were made before the contract was sent back; that defendant has a standard form of contract; that the stuff he has done for them was on what was supposed to be their standard form; that he has had some contracts but did not remember enough about them to know whether he could recognize one of the same kind or not; that he had signed them and worked under them but did not know whether they had been changed since then or not; that it was a printed form and that the contract was being prepared on one of those printed forms.

Witness further testified that the values put

(Bill of Exceptions—Testimony of Otho Poole.)

upon the list of property at Prince Rupert at the time of the delay were secured from an invoice that was made by Mr. Dean at the time he sent it down; that the date on the list was July 5, 1915; that there may be some small items as to which witness could not say whether they were there at the time of the delay or not; that the valuation represented the reasonable value of the cost of the stuff, allowing for wear and tear at the time the inventory was taken; that some of the stuff on the list was bought new for the job and some of it had been used for approximately a couple of years; that witness could not tell what part was bought for the job, or what part had been used for a couple of years or more.

Witness further testified that the compressor put on the list had been used for about a year and a half when it went up; that the value put on the compressor was Three Hundred and Nine Dollars (\$309.00); that it cost Three Hundred and Seventy-five Dollars (\$375.00) new; that Mr. Dean made the list up so that it could be given to Mr. Overmire; that witness did not know whether Mr. Dean made the list up to sell it to the Grand Trunk Pacific, or not.

Witness further testified that the complaint charged for only moving the steel in the dry dock; that his estimate on the cost of the work was ninety cents (90c) a ton, including erecting, riveting, handling and painting, if any; that in charging in the complaint for this extra handling, he took the

(Bill of Exceptions—Testimony of Otho Poole.)

cost of the entire job and subtracted the ninety cents (90c) a ton which he figured it would cost, then charged One Dollar (\$1.00) a ton for handling, absorbing Seven Hundred (\$700.00) and some dollars himself; that the job cost over Five Thousand Dollars (\$5,000.00); that there were approximately Two Thousand Four Hundred Fifty-nine (2,459) tons in the job; that he deducted from the actual cost of sorting and handling it at ninety cents (90c) a ton, which he had figured in his contract, and charged defendant with the difference, less a certain part which he had absorbed himself, because he always expected some question to come up of why he didn't absorb some of it; that he charged defendant for a dollar a ton and stood all over that himself.

Witness further testified that the material was landed on the edge of the dock with these plates piled three and four feet deep; that that was exactly where the material was supposed to be landed; that the contract called for the steel to be landed on the dock, and that it was landed on the dock; that the rest of the steel was to be landed on the dock too, just the same as the other stuff; that it was landed on the dock; that the contract said it was to be landed on the dock; that the material for the dry dock was scattered around in different places; that defendant paid for scattering it around and that plaintiff handled it; that plaintiff's men did the work for defendant; that witness turned the

(Bill of Exceptions—Testimony of Otho Poole.)

crew and the rigging over to the defendant; that Mr. Dean superintended the job; that his men did the work and his superintendent superintended the job; that the men doing the work were his employees.

Witness further testified that the only delay for which plaintiff was undertaking to recover, was delay in building the dry dock; that before he was tied up, he had a discussion with Mr. Overmire, and witness told him he would bill him for the work; that witness wrote Mr. Overmire a letter from Portland; that he wrote the letter because Mr. Dean notified him that the pontoons were not going to be ready; that Mr. Dean was on the job, saw the pontoons building, and knew how long it would take to build them.

Witness further testified that he remembered Mr. Pillsbury insisting that plaintiff start work on two pontoons; that witness took no orders from Mr. Pillsbury; that Mr. Pillsbury wrote him a letter instructing him to start on two pontoons, and that he took it up with Mr. Overmire, and that Mr. Overmire said that "your contract is with me. You are looking to me for these delays and if you take any orders from Pillsbury and there is another tie up, I won't be responsible."

Thereupon defendant offered in evidence a letter dated September 26, 1914, which was identified by the witness, received in evidence and marked "Defendant's Exhibit 4," which is as follows:

(Defendant's Exhibit 4)

"J. H. PILLSBURY,

Civil Engineer,

Prince Rupert, B. C.

Resident Engineer G. T. P. Dry Dock.

Prince Rupert, B. C., September 26th, 1914.

Poole-Dean Co.,

Portland, Oregon.

Gentlemen :

This is to inform you that the second pontoon was launched last Tuesday, the 22nd inst., and that the two pontoons are now awaiting the beginning of the erection of the wings by you. I am informed by Mr. Donnelly that he has taken up with the U. S. Steel Company this question and that he regards it as very necessary that a start at steel erection be made with two pontoons.

Please let me know at once how soon you can start work.

Yours truly,

J. H. PILLSBURY."

Thereupon defendant offered in evidence a letter, dated September 30, 1914, which was identified by the witness, received in evidence and marked "Defendant's Exhibit 5," which is as follows :

(Defendant's Exhibit 5)¹

"30 September, 1914.

Mr. J. H. Pillsbury, Civil Engineer,
Resident Engineer Grand Trunk Pacific,
Prince Rupert, British Columbia.

Dear Sir:—

We have your letter of September 26th, stating that the second pontoon was launched September 22nd. As our contract is with the United States Steel Products Company, it is necessary that we should receive written instruction from them before starting this work.

We are prepared to begin this work at any time, and we wish to know if you can allow us sufficient space upon the dock to rivet the bulkheads and frames.

We have instructed the Canadian Northwest Steel Company to ship a crane stop to you, and Mr. Dean will put it in place as soon as he returns to Prince Rupert.

Thanking you for the information, we are,

Yours very truly,

POOLE-DEAN COMPANY,

O.P./L

By....."

Thereupon witness further testified that, upon receiving the letter from Mr. Pillsbury (Defendant's Exhibit 4), he did not start work; that he started when he got orders from Mr. Overmire, some time in November, 1914; that he did not be-

(Bill of Exceptions—Testimony of Otho Poole.)

gin until then because he had not received orders from Mr. Overmire; that that was the only reason he did not commence before then; that it was during this period that the delay, of which plaintiff complained, occurred; that this delay began some time in August or September, and continued until November.

Witness further testified that Mr. Pillsbury and his company threatened to seize plaintiff's plant and do the work themselves but did not do it; that witness could not recall whether Mr. Dean wrote him to that effect or not, but thought that either Mr. Fey or Mr. Overmire had notified witness of receiving a letter from Mr. Donnelly stating that if plaintiff did not proceed with the work immediately under Mr. Donnelly's instructions, Mr. Donnelly would take the work away from plaintiff; that plaintiff told Mr. Fey or Mr. Overmire that Mr. Donnelly was welcome to take it, and that witness would start upon getting orders from the defendant; that witness was not positive whether a letter, dated November 9, 1914 (Defendant's Exhibit 6), was the first order that he had from defendant to commence work or not; that witness thought Mr. Overmire wrote him another letter telling him to get ready to start.

Thereupon defendant offered in evidence a letter, dated November 9, 1914, which was identified by the witness, received in evidence and marked "Defendant's Exhibit 6," which is as follows:

(Defendant's Exhibit 6)

“UNITED STATES STEEL PRODUCTS COMPANY,
PACIFIC COAST DEPARTMENT,
PORTLAND, OREGON.

November 9, 1914.

Subject: Prince Rupert Dry Dock.

Grand Trunk Pacific Ry. Terminals.

Messrs. Poole-Dean Co.,

Portland, Oregon.

Gentlemen:

This is to advise you to proceed at once with the erection of the steel work for the dry dock at Prince Rupert.

Kindly acknowledge receipt of these instructions in order that we may know the matter has your attention.

Very truly yours,

BRIDGE AND STRUCTURAL DEPARTMENT,

C. C. Overmire,

Contracting Manager.

By Frank E. Fey,

Contracting Agent.

FC

CC to W. H. Stratton,

E. J. Schneider.

Copy to Prince Rupert Office 10th October, 1914.”

Thereupon witness further testified that his men were brought back to Vancouver some time in August, 1914.

(Redirect Examination of Otho Poole for Plaintiff)

Upon redirect examination of the witness, plaintiff offered in evidence a letter, dated November 27, 1914, which was identified by the witness, received in evidence and marked "Plaintiff's Exhibit M," which is as follows:

(Plaintiff's Exhibit "M")

“UNITED STATES STEEL PRODUCTS COMPANY,
PACIFIC COAST DEPARTMENT,
PORTLAND, OREGON,

Nov. 27, 1914.

Poole-Dean Company,
268 North 13th St.,
Portland, Oregon.

Gentlemen:

For your information I wish to advise that under date of November 19th Mr. Pillsbury advised me that two pontoons were launched on the 18th inst., making four now in the water.

Inasmuch as there can be no question but that enough pontoons are launched so that your crews can keep at work for some considerable time, and furthermore because of the fact that on receipt of instructions from Mr. Pillsbury to have work resumed at Prince Rupert, I hope you will lose no time in getting to work on the wings of the dry

(Bill of Exceptions—Plaintiff's Exhibit "M.")

dock and carrying this work through as fast as possible to completion.

Yours very truly,

BRIDGE AND STRUCTURAL DEPARTMENT,

C. C. Overmire,

Contracting Manager.

By C. C. Overmire,

Contracting Manager.

CCO

Thereupon witness testified that, as to the scattering of the steel for the pontoons about the yards, United States Steel Products Company was paying the bills; that he just turned the men and equipment over to the Steel Products Company to handle the stuff when it came; that the men were on his pay roll; that he did not charge anything for the use of the rigging or for Mr. Dean's time; that Mr. Dean was looking after the matter and was in charge; that Dean had to put the steel in any place where he could find space to pile it; that the space was taken up with other material.

Witness further testified, referring to the letter of May 3, 1913 (Plaintiff's Exhibit "H"), that there was nothing said between him and Mr. Overmire as to how the steel was to come by boat in the event that it did so come, or about how many boats it would come on; that he did not even know that it was coming by boat; that Mr. Overmire told him

(Bill of Exceptions—Testimony of Otho Poole.)

that if it came by boat, it would come on their own boats; that witness did not know what line, or whether defendant chartered their boats or owned them or what.

Witness further testified that the trusses in the Lincoln High School came by water from New York; that they were larger trusses than the trusses in this case; that the trusses for the freight shed which witness handled came from New Orleans by water and were then shipped overland; that witness started the Multnomah County Court House; that there were trusses on the last wing of the Court House, and that that was the time he left Smith-Rice Company; that the trusses on the Court House were about the same size as some of those in this case; that they came from Milliken Bros. all the way by water; that they were fabricated complete, all in one piece.

Thereupon the plaintiff, to sustain the issues upon its part, called as a witness one CHARLES O. DEAN, who was duly sworn and testified as follows:

**(Direct Examination of Charles O. Dean
for Plaintiff)**

Witness testified that he was connected with the plaintiff company during the fall of 1912 as an officer of the company; that he never saw the shop detail plans for the work at Prince Rupert, B. C.,

(Bill of Exceptions—Testimony of Chas. O. Dean.)

until about a day or two before he left for Prince Rupert; that they were sent to his office in Portland and that he was looking over them there; that he and Poole took the plans and went up to Mr. Overmire's office, and in going over the plans they told Mr. Overmire that the plans showed the material coming knocked down, which was not in their contract; that it was to come out riveted up, and that they would expect defendant to pay for the extra riveting; that the only response witness heard was that Mr. Overmire told Poole to go ahead; that witness took no active part in the conversation at that time; that he was going through the plans and did not get the whole conversation; that there was conversation other than that which he had related, but that he did not get it.

Witness further testified that he left Portland for Prince Rupert in November, 1913, to superintend the erection of the buildings and dry dock work there for plaintiff; that he began erecting steel some time in December; that he began first on the foundry; that the foundry had trusses but no deep struts, just double angles.

Witness further testified that he saw the trusses for the foundry as they arrived at Prince Rupert from the boat, and that they all came knocked down; that they should have been riveted in half sections; that the trusses all came just the angles bundled together; that he had to examine the truss work and rivet it on the site; that it all should have

(Bill of Exceptions—Testimony of Chas. O. Dean.)

have been done at the shop; that that is shop work; that the trusses must have been in thirty (30) pieces, approximately.

Witness further testified that there were gusset plates on part of this foundry job, and that they were all loose on the main truss; that the gusset plates on the small lean-tos were riveted on the chord.

Witness further testified that in erecting the foundry, he kept an account of the amount of cost involved in doing what he claimed was extra field work; that he made a memorandum at that time; that, referring to such memorandum, the extra cost involved in doing the shop work for the foundry ran over Four Hundred (\$400.00) Dollars; that at the time the work was done, he kept a detailed account on his report sheets, which witness thought were in Portland; that he knew that the amounts were correct; that the total amount for the extra job work on the foundry was Four Hundred Eighty-one Dollars and Fourteen cents (\$481.14).

Witness further testified that the next building he erected was the power house; that it had trusses, struts, and gusset plates; that it had two classes of trusses in it, one a main truss; that the building was all knocked down, the same as the other buildings; that there was a lean-to on it which had a truss approximately fifty (50) or sixty (60) feet long, but that truss came as he expected the whole job to come, broken in the center, in two sections,

(Bill of Exceptions—Testimony of Chas. O. Dean.)

riveted up in the shop; but that the other truss was all knocked down, gusset plates loose and pitch angles, four (4) on top, also loose; that he judged there were about thirty (30) pieces in the main truss, and for the truss for the lean-to two (2) main pieces and probably one (1) or two (2) angles to be riveted in the field; that he kept an account of the extra shop work for the steel in the power house and that it cost Two Hundred Seventy-nine Dollars and Thirty-nine cents (\$279.39).

Witness further testified that the next buildings he erected were the ship shed, the boiler and blacksmith shop (one building), and the machine shop; that the steel for these buildings came knocked down; that these buildings contained trusses, struts and gusset plates; that none of the trusses were in two pieces as in the lean-to on the power house; that he kept account of the extra work involved on these buildings, and that the total cost on the machine shop and boiler and blacksmith shop was Five Hundred and Seventy-nine Dollars (\$579.00), and on the ship shed Eighteen Hundred Ninety-six Dollars and Sixteen cents (\$1896.16).

Witness further testified that he also erected the coal storage building; that the steel, all of the trusses, in this building came knocked down, the same as the other buildings; that he kept an accurate account of the extra cost of assembling the steel work for this building, and that it amounted

(Bill of Exceptions—Testimony of Chas. O. Dean.)

to One Hundred Sixty-six Dollars and Ninety-eight cents (\$166.98).

Witness further testified that he erected six buildings in all, of which there was extra assembling in the field, and he completed the last building, the coal storage building, some time in 1914; that he did not remember what month; that when he completed the work for these buildings, he did not start in to do the work of erection of the steel work for the pontoons and dry docks, but tied up the work about the first of September, 1914; that he took an inventory of the amount of equipment he had on hand at that time; that he checked over that material himself on a memorandum; that part of the equipment was valued at its full value, being brand new, and never having been taken out of the case or crates; that the rest of it had been in use; that he valued it at what it was worth at that time, allowing for depreciation and wear and tear; that the total value of the equipment on hand when he was compelled to close down September 1, 1914, was Ten Thousand Six Hundred Eighteen Dollars and Nineteen cents (\$10,618.19).

Witness further testified that he used part of this equipment, about the 4th of November, when he went to work; that he was not able to use the other part until the first of December; that when the pontoons were ready, he put it all in use; that the pontoons were not ready so that he could use all of this equipment until December 1, 1914.

(Bill of Exceptions—Testimony of Chas. O. Dean.)

Witness further testified that he obtained his employees from Vancouver, B. C., because there were no mechanics in Prince Rupert of that class; that he had to use structural iron workers, skilled men; that he had eighteen (18) men there on September 1, 1914; that he had to pay their transportation and traveling time to Vancouver; that some of them were re-employed by plaintiff company on this work when he went back to Prince Rupert; that he kept the cost of the expense of sending these men down to Vancouver and returning them, and that it was Nine Hundred Eighteen (\$918.00) Dollars for eighteen (18) men.

Witness further testified, in answer to questions from the Court, that the riveting is done with pneumatic air hammers, and that the rivets are heated in a forge, good and hot, and put in the hole; that one man holds them in the hole, and one uses a pneumatic air hammer, and that they have a dolly-bar, a piece of steel with a cap on the head of it; that it takes four men for the riveting gang, one man to heat, one man to hold on the rivet, one man to stick in the rivets, and the other man to drive them; that they are all driven hot.

Witness further testified that it was necessary to do extra handling of the steel on account of having only about a quarter of the space he should have had; that this steel was for the dry dock work; that he kept a charge of this amount of Twenty-four

(Bill of Exceptions—Testimony of Chas. O. Dean.)

Hundred and Fifty-nine (\$2459.00) Dollars that was claimed for extra handling of the steel.

Witness was then asked whether he knew what the estimate was upon which the steel was supposed to have been handled, assuming that the yard up there were reasonably free and open and there was a reasonable amount of space. To this question defendant objected on the ground that such estimate was immaterial, and thereupon the Court overruled the objection, and allowed the question, and thereupon defendant duly excepted to the ruling of the Court, which exception was allowed. Thereupon, in answer to the question, witness testified that he estimated it at ninety (90c) cents a ton, providing he had plenty of space.

Witness further testified that he kept an accurate account so that he could tell what the cost of moving the steel was in the yard, under the conditions under which he had to work up there, that he had a memorandum of it and that it was Five Thousand Four Hundred Twenty-nine Dollars and Thirty-two cents (\$5,429.32); that this would be approximately Two Dollars and Twenty-eight cents (\$2.28) a ton.

Witness further testified that he had been in this structural steel work for twenty years, was familiar with what it would ordinarily cost for moving steel about in the yard like that at Prince Rupert, assuming that there was plenty of room.

Witness was then asked whether in his opinion,

(Bill of Exceptions—Testimony of Chas. O. Dean.)

based upon his experience, ninety cents (90c) was a reasonable charge. To this question defendant objected on the ground that it was immaterial, and thereupon the Court overruled the objection, and allowed the question, and thereupon defendant duly excepted to the ruling of the Court, which exception was allowed.

Thereupon witness, in answer to the question, testified that ninety cents (90c) was a very reasonable price, and that there was a profit in it at ninety cents (90c) a ton, provided they had space; that it cost about a dollar thirty-eight (\$1.38) extra per ton to move this steel up there because of the congested condition of the yards; and that that was how he computed the amount of Twenty-four Hundred and Fifty-nine (\$2459.00) Dollars.

Witness further testified that he was familiar with the particular items of work comprised in the item of Four Hundred Dollars and Seventy cents (\$400.70) contained in plaintiff's last cause of action covering extra work done in April, May, June and July.

**(Cross-Examination of Charles O. Dean
for Plaintiff)**

Upon cross-examination, witness testified that he left Portland about the 19th or 20th of November, 1913, and arrived at Prince Rupert about the 23rd; that at that time the ground was not filled in on part of the work and that there was lumber piled

(Bill of Exceptions—Testimony of Chas. O. Dean.)

all over the dock, taking up probably two-thirds of the room where the ship would land; that the whole dock was built, but the decking on it was not completed; that the dock fronted on the water for several hundred feet; that there was only one spot at which the ship could land; that the dock was so crowded that he had to scatter this material in different places, that he could not put it in one place where he could use a derrick for sorting out the material.

Witness thereupon, referring to a tracing which was subsequently offered in evidence by plaintiff and admitted and marked "Plaintiff's Exhibit N,"

(Bill of Exceptions—Testimony of Chas. O. Dean.)

testified that he made that tracing himself on September 5, 1914; that it did not show the condition the dock was in when he went there; that the part of the dock to the left, looking from the shore, was completed, as was also a part of the dock running at right angles thereto; that the part marked "ship shed," to the right looking from the shore, had the piling in but not the decking; that the upright part, running out at right angles to this latter part, was all decked and finished when he went there; that the dock line outside of the ship shed, the launching platform, was completed; that when the witness went there the dock was all completed outside the ship shed, with the exception of the upright part which goes out further into the water.

Witness further testified that the boat arrived a few days after he did; that the next boat came in the following January; that they both landed in the same place; that the third boat came in the following September, bringing dry dock material, but not all of it; that about four hundred and fifty (450) tons of the dry dock material came before, on the second ship; that when the third boat landed, the part of the dock which was all open had not been planked over; that the lines on the tracing show where he unloaded the material for the dry dock; that the space marked as "concrete piling" was all taken up with such piling; that he could not land any material on that dock; that it was

(Bill of Exceptions—Testimony of Chas. O. Dean.)

reserved for the contractor who was putting in the foundation for the pier derrick.

Witness further testified that he did not know who reserved this dock; that he was ordered to keep off of it; that Mr. Steele, of the defendant company, was in Prince Rupert at that time and had taken up with Pillsbury the space he (Mr. Steele) could have for landing this material; that that was the space which Pillsbury gave to Mr. Steele; that witness did not talk with Mr. Pillsbury at all; that the rest of the dock where the ship landed was clear for the plaintiff company; that when the last ship arrived, pontoons were being built on the dock in front of the ship shed and that that space was all filled up with timber; that at that time the ship shed was completed; that a freight house was built on the dock, timber piled up, and a railway track laid, and he could not land that material there unless he had taken it right away; that no material could be strung along that dock at all when the third boat came in, or at any time.

Witness further testified that the clear space he had for landing or storing that material was about forty (40) feet wide by one hundred (100) feet long; that they had another narrow space about thirty (30) feet wide at one end and about one hundred and fifty (150) feet long, tapering down to nothing at the other end, where all they could lay was just one pile of channel, not over a foot

(Bill of Exceptions—Testimony of Chas. O. Dean.)

wide; that the tracing was not drawn to scale but was just a sketch.

Witness further testified that the Grand Trunk Pacific Railway Company or Development Company was building the pontoons; that the timber piled on the dock belonged to the Grand Trunk Pacific; that there was material piled on the dock belonging to the contractor on the superstructure; that the other contractors had nothing to do with witness' contract, or with defendant's contract; that the other contractors were independent contractors under the Grand Trunk Pacific Railway Company or the Development Company.

Witness further testified that the men came three (3) days after he arrived at Prince Rupert; that there was a railroad in there at that time, but not connected through; that the railroad was completed through to Edmonton shortly after he went there; that when they started to unload the boat they notified him that he would have to take the steel from the ship's slings; that he notified Poole, and waited for his orders; that witness saw Pillsbury there upon arriving; that witness had nothing to do with Pillsbury at all; that he got no plans or specifications from Pillsbury; that he got the plans and specifications from the defendant company; that when the job was almost completed, he copied the specifications himself in Pillsbury's office; that he could not get them before that time; that he never got any specifications from defendant company's

(Bill of Exceptions—Testimony of Chas. O. Dean.)

office, that he did the work without any specifications whatever; that he knew there were specifications, but did not get any; that he never saw the specifications until he copied them in Pillsbury's office; that he asked Poole for specifications, but did not ask defendant company for them.

Witness further testified that defendant company had no agent on the ground until about April, 1914; that Mr. Overmire was up there in January, when the second boat came in, but did not stay more than about two days; that witness did not ask Mr. Overmire or Mr. Pillsbury for plans and specifications; that defendant company's representative was Mr. Steele, and that when Mr. Steele arrived, witness was working on the power house, the foundry was not completed, and very little work had been done on the ship shed and the machine shop.

Witness further testified that the trusses in the foundry were small, about thirty-five (35) feet long when assembled, and about eleven (11) or twelve (12) feet deep; that the trusses in the power house were about fifty (50) foot span and about fifteen (15) feet deep assembled; that the trusses in the lean-to to the power house were between fifty (50) and sixty (60) feet long and about eight (8) feet deep at one end, and five (5) at the other; that in the ship shed they had a built-up truss one hundred and eighty (180) feet long, and varying all the way from two (2) feet to about twenty (20) feet deep; that the trusses in the blacksmith and boiler shop

(Bill of Exceptions—Testimony of Chas. O. Dean.)

were the same as those in the foundry, about thirty (30) feet by ten (10) or eleven (11) feet; that the trusses in the machine shop were the same thing exactly; that the trusses in the coal storage plant were about fifty (50) feet long by twelve (12) to fifteen (15) feet deep.

Witness further testified that the extra expense, of which he kept an account, consisted of extra assembling and riveting that should have been done in the shop; that by extra assembling, he meant putting the pieces together; that the trusses came all knocked down, and he had to take and put them together; that then he had to do the riveting; that in this extra expense he included erecting,—riveting and assembling,—all labor, and also liability insurance amounting to ten or fifteen per cent of his pay roll; that the insurance amounted as follows: power house, Nineteen Dollars and Eleven cents (\$19.11), machine shop and boiler and blacksmith shop, Fifty-three Dollars and Thirty-five cents (\$53.35), ship shed, One Hundred Seventy-four Dollars and Seventy-three cents (\$174.73), coal storage building, Fifteen Dollars and Thirty-eight cents (\$15.38), and foundry Forty-four Dollars and Thirty-four cents (\$44.34); that he arrived at those figures by keeping exact time on the men's work; that it took four men in the riveting gang; that he could use two men or four men in assembling; that on part of the work he used six men, taking one derrick gang; that on the rest of the work, he used

(Bill of Exceptions—Testimony of Chas. O. Dean.)

four men for part and only two men for part; that in putting on the gusset plates on the ship shed he would have six men in the gang, four men erecting and two men down below, putting gusset plates on the next piece ready to rivet and go up; that if there were small plates to put on, a one man job, he would put one man on.

Witness further testified that he kept the time, day by day, but did not have it with him, and could not tell the jury how many hours there were; that he paid his men sixty-two and a half cents ($62\frac{1}{2}c$) per hour for mechanics, Five Dollars (\$5.00) a day, and that they were all mechanics.

Witness further testified that of his equipment, two yoke riveters were brand new, one compressor riveter brand new, three air hoists were brand new, three oil forges were brand new, and that that was practically all that was new; that he did not use these yoke riveters on the rest of the work, but had to get new riveters for the dry dock work, because of those being plate work; that the oil forges were all especially for the dry dock work, and were not used on the other work at all; that the air hoists were not used on the other work at all; that he made a discount on the rest of the equipment, allowing as much as twenty-five (25%) per cent depreciation on some of it and valued the stuff at what he considered it worth at that time; that his list of equipment was made on July 5, 1915, from another list that he had; that at that time the

(Bill of Exceptions—Testimony of Chas. O. Dean.)

dry dock was not finished; that it was commenced by July 5th, but was not finished until about the first of September; that it was only completed in July, there being about six or seven weeks more of work on it; that the prices put on the equipment were copied from witness' memorandum when he left in 1914 when he tied up the job; that the list was made for plaintiff company's own benefit, an inventory of the tools.

Witness further testified that the men which he took down to Vancouver and brought back went down on the boat; that the fare was Eighteen Dollars (\$18.00) per man each way; that he had to pay these men traveling time from leaving Vancouver until arriving on the job, and from leaving the job until arriving at Vancouver; that some boats did not make the same time as others; that the men did not all go down on the same boat; that he had to pay their traveling time and expenses whether they did or not; that some of them took different lines of boat; that witness did not know what was the time of the several boats from Prince Rupert to Vancouver, but that it amounted to Twenty-five Dollars and Fifty cents (\$25.50) each way per man; that the time was a day and a half at Five Dollars (\$5.00) per day for each man each way; that when he tied up about the first of September, 1914, all the work was finished but the dry dock; that at times he had as many as sixty men on the job, maybe sixty-five; that he had to send to Vancouver for all me-

(Bill of Exceptions—Testimony of Chas. O. Dean.)

chanics; that the men whom he sent back were fit to work on the dry dock.

Witness further testified that he resumed work about the 4th of November, working about ten days on the pier derrick before resuming work on the dry dock; that this pier derrick was not used for the dry dock, but was permanent, and was located at the end of the pier where they had to leave the decking open to drive the concrete piling; that the work on that derrick was part of his contract with the defendant company; that he did not know who furnished the steel for it; that it came in a separate shipment from any of the rest of the material; that he did not know how it was arranged in the contract, but he got orders from Poole to put the derrick up; that he did not know whether it was included in the original contract or not.

Witness further testified that he got the order from Poole to put up this derrick before September 1, 1914; that he could have used the men that he brought back to Vancouver for putting up this derrick, but like the pontoons, it was not ready, so he had to send the men back; that no new men were brought up for the purpose of doing this work; that the men he brought up from Vancouver were brought up for the dry dock work; that some of them worked on the derrick; that some men he hired in Prince Rupert worked on the derrick.

Witness further testified that he started this work on the dry dock about the first of December;

(Bill of Exceptions—Testimony of Chas. O. Dean.)

that he started to work on the pontoons before the first of December, but started to assemble the steel and rivet it together about the first of December; that he was on the pontoons as soon as they were launched, about the middle of November; that the first pontoon was launched in August, and the second between August and September; that he was there when the first one was launched; but not when the second one was launched; that altogether there were twelve pontoons on the dry dock; that he did not know whether the Grand Trunk Pacific Railway or the Development Company furnished the pontoons; that the defendant company furnished the pontoons for the plaintiff company; that nobody was up there representing the defendant company continually; that Mr. Steele was up there, but did not give the pontoons to the witness; that the pontoons were tied up at the wharf, and that he went out and put the steel on them; that Poole notified him when the pontoon was ready to go to work on it; that when witness arrived, the Grand Trunk was building the pontoons; that, as they built them, they tied them up at the wharf where witness wanted them, and he erected the steel on them.

Witness further testified that he kept an accurate account of the expense of transferring the steel for the dry dock; that he had a big pile of plates and, if he wanted a plate out of it, he would have to dig down and get it out; when he laid the other stuff out, instead of sorting it, he had to pile it up;

(Bill of Exceptions—Testimony of Chas. O. Dean.)

if he had had sufficient space when he started in, he could have sorted it out and laid it in different places; that as it was, he had to keep piling it over and piling it over; that Mr. Steele, of the defendant company, put it where it was; that witness had to make room to store the steel; that Mr. Steele had room enough to pile it up and store it; that witness took it from where it was stored.

Witness further testified that what he was charging for in this case was for taking the steel from where it was stored, sorting it and taking it to the dry dock; that the charge was only for sorting the dry dock steel, not for carrying it from where it was to the dry dock; that he expected the steel to be unloaded where it was when he commenced to sort it; that there is no difference between sorting and handling; that the charge was just one charge for the same thing.

Witness further testified that the steel was too heavy to pick up by hand; that it took six men and a derrick on that work; that if it was light stuff, one or two men could handle it, depending upon the size of the piece.

Witness further testified that the item of Four Hundred Dollars and seventy cents (\$400.70) was for extra work on the dry dock wings, extensions to them; that it was done in April, May, June and July; that at that time Mr. Fey was up there representing defendant company; that Mr. Fey ordered him to do the work, telling him to go ahead and do

(Bill of Exceptions—Testimony of Chas. O. Dean.)

it, and that it would be paid for in the usual way the same as the rest of the work; that Mr. Fey did not tell the witness that Pillsbury ordered the work to be done; that witness was on the job, could see the mistake that had been made, and knew that the work had to be done; that this work was not covered by plaintiff's contract; that he did the work for Mr. Fey, and did not know what orders Mr. Fey got from Pillsbury.

Witness further testified that when the first part of this extra work, the first section, was started, Mr. Fey was not up there at all; that the biggest part of these items were ordered by Mr. Fey; that witness could pick out what was not ordered by him; that the change in the compressor foundation on section one, amounting to Fifty-seven Dollars and sixty cents (\$57.60), was made under Mr. Pillsbury's orders and not under Mr. Fey's; that the orders for the plate frames, witness got from Mr. Fey; that witness had no plans or specifications for this work.

Thereupon the plaintiff, to sustain the issues upon its part, called as a witness one CHARLES MCGONIGLE, who was duly sworn and testified as follows:

**(Direct Examination of Charles McGonigle
for Plaintiff)**

Witness testified that he was Secretary of the Poole-Dean Company; that he was not connected with the plaintiff company in September, 1912; that he has been in the structural steel business for about fifteen years, as draftsman and in the field, employed by Cambria Steel Company, Johnstown, Pennsylvania, Garry Iron & Steel Company, Cleveland, Ohio, and by American Bridge Company, which is now called the United States Steel Products Company, in their New York or Brooklyn office, and by Milliken Bros.; that he is familiar with steel as it is shipped by rail and by boat, especially steel trusses, struts and gusset plates.

Witness further testified that it is economical and customary to do all the fabricating that can possibly be done in the shop; that their equipment is better and labor more permanent, and that all the fabricating that can be done and can be shipped is done in the shop, that is all the assembling and riveting; that he had never seen any difference in shipping by water and by rail; that Milliken Bros. have their plant on tide water, in New York, and ship steel to the Pacific Coast through San Francisco, Portland and Seattle, and that their custom was the same as other customs, shipping either by rail or by water.

Witness further testified that he had heard the testimony of Poole and Dean as to how these trusses came by water to Prince Rupert and would not say

(Bill of Exceptions—Testimony of C. McGonigle.)

from that testimony that they came up there by boat in the customary manner.

Witness testified, referring to Plaintiff's Exhibit "B," that it would be customary to ship that part of the truss shown in four pieces, that is, from the peak point to the column connection and down to the third point in the lower chords would be shipped in one piece, then a small loose angle would generally be shipped loose, then on the opposite side of the truss, the other member would be riveted practically the same way, except that the peak plate would go on one side, not on both; that a gusset plate was usually referred to as any small plate connecting two pieces of steel, but a peak plate was a rather important gusset plate; that said Exhibit "B" showed the peak plate loose; that it is customary to ship the peak plate to either one side or the other of the truss, the truss being divided in the middle; that according to the drawing, the peak plate would have to be driven and riveted in the field; that, according to the drawing, the truss came in about twenty (20) to twenty-two (22) pieces, that is, the whole truss from column to column; that if the whole truss came in the customary manner, it would be in four (4) pieces; that it would be possible to ship that truss in the customary manner, in four pieces.

Witness testified, referring to Plaintiff's Exhibit "C," that the drawing showed struts; that so far as witness could see, that strut was all in one (1) piece; that there was a gusset plate on one end of

(Bill of Exceptions—Testimony of C. McGonigle.)

the strut riveted to the strut, in the customary manner; that the length of the strut was twenty (20) feet, not counting the plate; that the dimensions seemed to be fifty-eight (58) inches in one direction and eight (8) feet five (5) in the other; that the length of the truss shown on Plaintiff's Exhibit "B," if it came in the customary way would be about twenty-nine (29) feet with the gusset plate, and the depth of it over all would be about eight (8) feet, and thirteen (13) from the peak to the lower chord.

Witness further testified, referring to Plaintiff's Exhibit "D," that the drawing showed bottom chords; that the drawing showed a gusset plate, marked "M," to be shipped loose, also some angles; that it is generally customary, under similar circumstances, to ship gusset plates and angles loose like that.

Thereupon the witness begged pardon, and further testified that it is generally customary to rivet gusset plates and angles on wherever rivets can be riveted in; that this member was approximately forty-one (41) feet long by four feet (4) wide with the gusset plate riveted on; that he thought it would be customary to have the gusset plate and the angle irons riveted on.

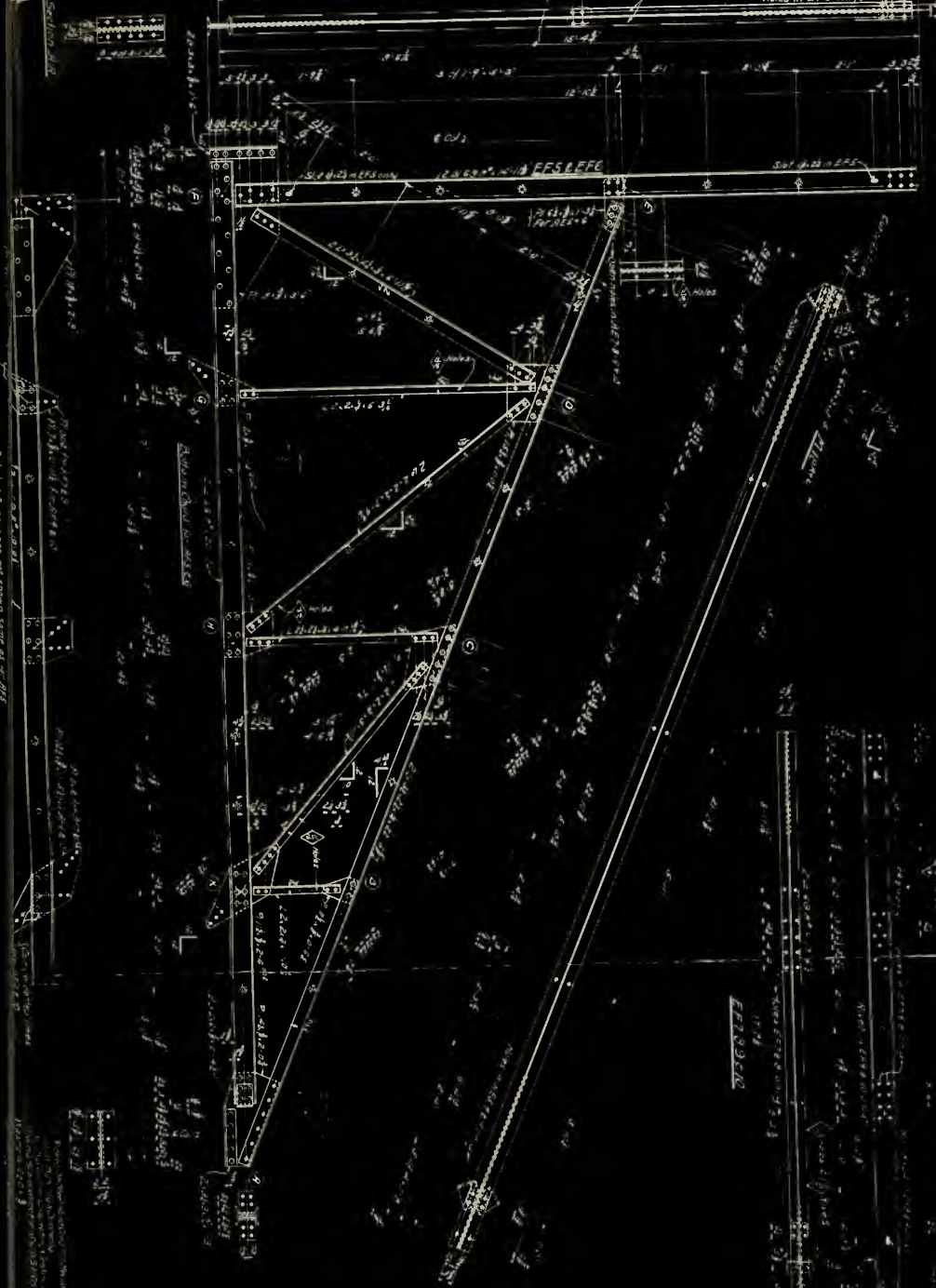
Witness further testified, referring to Plaintiff's Exhibit "E," that it showed a strut for a ship shed; that a strut was rather a general name; that the drawing probably showed a crane runway column;

(Bill of Exceptions—Testimony of C. McGonigle.)

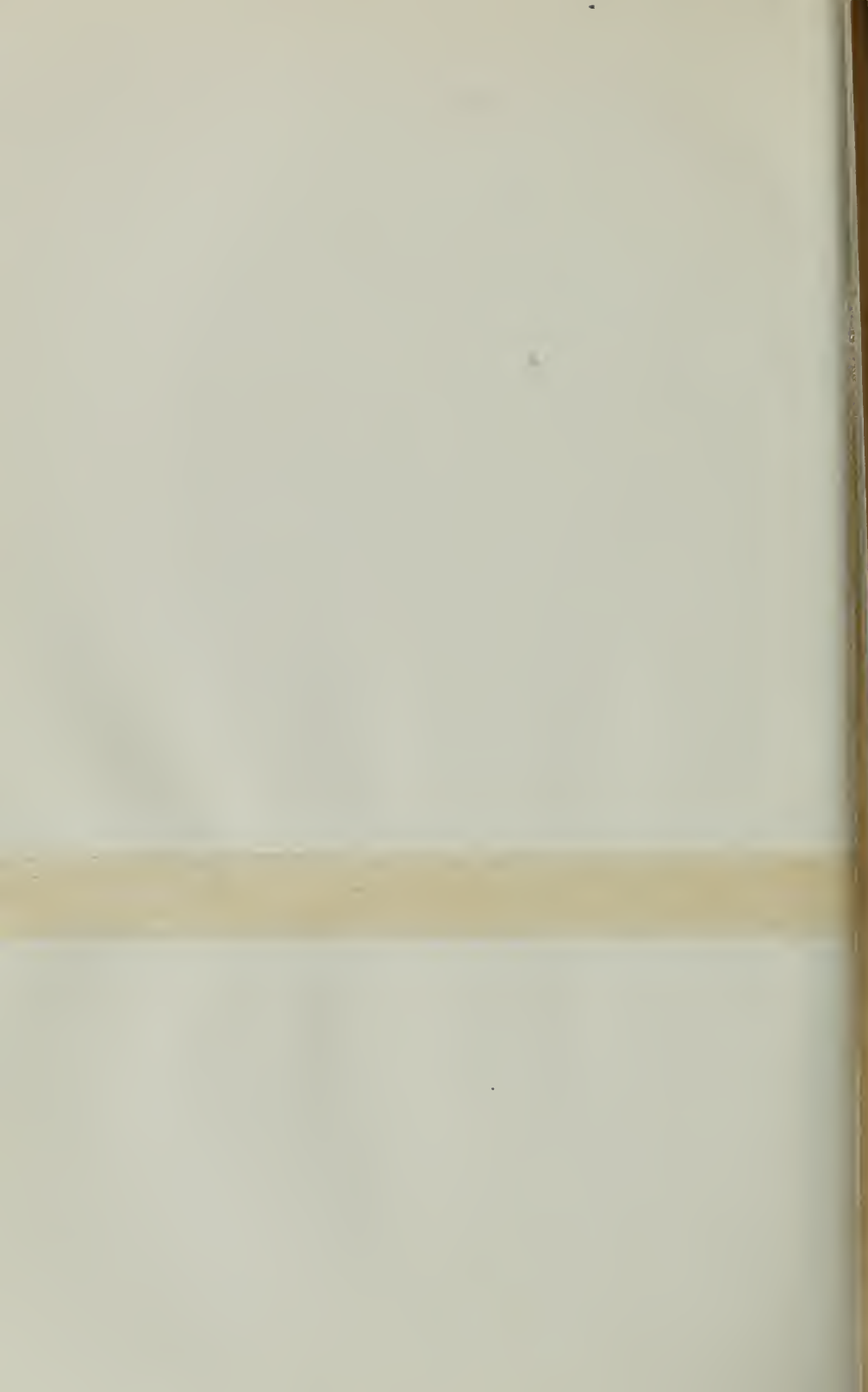
that the drawing showed that the column was shipped knocked down; that customarily that piece could be shipped riveted up; that that piece was a little over thirty (30) feet long without the gusset plates and seven (7) feet ten and one-eighth ($10\frac{1}{8}$) inches wide; that the gusset plate, shown in the upper right hand corner of the drawing, connected the two parts of this strut together; that the drawing showed this gusset plate to come loose; that sometimes a gusset plate like that might come loose; that the gusset plates were riveted on the bottom chord and on the top chord when the column came out; that the web members came loose.

Witness further testified, referring to Plaintiff's Exhibit "F," that the drawing showed the top section of a crane run column; that the drawing showed it to be riveted up complete with all the gusset plates and angle irons on; that the column was over thirty-nine (39) feet long and five (5) feet wide; that it belonged to the ship shed; that the ship shed contained nine (9) or ten (10) of these columns, eight (8) of them anyway, and that eight (8) top sections came assembled, and the bottom sections of what looked like the same thing came knocked down.

Thereupon plaintiff offered in evidence a drawing, which had been attached to a deposition subsequently to be read, which drawing was admitted in evidence and marked "Plaintiff's Exhibit O."



Member No.	Length	Required	Material
1	10'-0"	1/2"	PL 1/2" x 12"
2	12'-0"	1/2"	PL 1/2" x 12"
3	14'-0"	1/2"	PL 1/2" x 12"
4	16'-0"	1/2"	PL 1/2" x 12"
5	18'-0"	1/2"	PL 1/2" x 12"
6	20'-0"	1/2"	PL 1/2" x 12"
7	22'-0"	1/2"	PL 1/2" x 12"
8	24'-0"	1/2"	PL 1/2" x 12"
9	26'-0"	1/2"	PL 1/2" x 12"
10	28'-0"	1/2"	PL 1/2" x 12"
11	30'-0"	1/2"	PL 1/2" x 12"
12	32'-0"	1/2"	PL 1/2" x 12"
13	34'-0"	1/2"	PL 1/2" x 12"
14	36'-0"	1/2"	PL 1/2" x 12"
15	38'-0"	1/2"	PL 1/2" x 12"
16	40'-0"	1/2"	PL 1/2" x 12"
17	42'-0"	1/2"	PL 1/2" x 12"
18	44'-0"	1/2"	PL 1/2" x 12"
19	46'-0"	1/2"	PL 1/2" x 12"
20	48'-0"	1/2"	PL 1/2" x 12"
21	50'-0"	1/2"	PL 1/2" x 12"
22	52'-0"	1/2"	PL 1/2" x 12"
23	54'-0"	1/2"	PL 1/2" x 12"
24	56'-0"	1/2"	PL 1/2" x 12"
25	58'-0"	1/2"	PL 1/2" x 12"
26	60'-0"	1/2"	PL 1/2" x 12"
27	62'-0"	1/2"	PL 1/2" x 12"
28	64'-0"	1/2"	PL 1/2" x 12"
29	66'-0"	1/2"	PL 1/2" x 12"
30	68'-0"	1/2"	PL 1/2" x 12"
31	70'-0"	1/2"	PL 1/2" x 12"
32	72'-0"	1/2"	PL 1/2" x 12"
33	74'-0"	1/2"	PL 1/2" x 12"
34	76'-0"	1/2"	PL 1/2" x 12"
35	78'-0"	1/2"	PL 1/2" x 12"
36	80'-0"	1/2"	PL 1/2" x 12"
37	82'-0"	1/2"	PL 1/2" x 12"
38	84'-0"	1/2"	PL 1/2" x 12"
39	86'-0"	1/2"	PL 1/2" x 12"
40	88'-0"	1/2"	PL 1/2" x 12"
41	90'-0"	1/2"	PL 1/2" x 12"
42	92'-0"	1/2"	PL 1/2" x 12"
43	94'-0"	1/2"	PL 1/2" x 12"
44	96'-0"	1/2"	PL 1/2" x 12"
45	98'-0"	1/2"	PL 1/2" x 12"
46	100'-0"	1/2"	PL 1/2" x 12"



(Bill of Exceptions—Testimony of C. McGonigle.)

Thereupon witness stated, referring to Plaintiff's Exhibit "O," that it showed a drawing of the trusses for the machine shop, blacksmith shop and foundry building; that it looked like a lean-to truss; that the drawing showed that it was knocked down, in nine (9) main pieces as a general thing; that if it had been fabricated as is customary, there should be two (2) pieces; that the vertical member, marked "EF-5—EF-6," would come loose customarily, and that the rest of it would be riveted up in one piece; that one piece would be approximately eight (8) feet nine (9) high by twenty-two (22) feet six and a half ($6\frac{1}{2}$) long, without considering the vertical member; that the vertical member would come loose, and the rest of it would be riveted together ordinarily; that "EF-5" and "EF-6" would come loose, and the rest of it would be in one (1) piece; that in the foundry building, there were twenty (20) such trusses; that it appeared that the machine shop, blacksmith shop and foundry building were exactly on the same general dimensions, and that each one would contain twenty (20) lean-to trusses; that the main trusses on the power house, as shown on Plaintiff's Exhibit "B," were fifty-two (52) feet in extreme length; that the trusses in the other buildings,—machine shop, blacksmith and boiler shop,—were smaller; that the general plan showed that these latter trusses were approximately thirty-six (36) feet in extreme length; that the over-all dimensions on the ship shed were one hundred fifty-nine

(Bill of Exceptions—Testimony of C. McGonigle.)

(159) feet six (6) inches by three hundred (300) feet; that there were no lean-tos on the ship shed; that the ship shed had a cantilever arm sticking out over the dock.

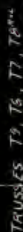
Thereupon plaintiff offered in evidence a drawing, which had been attached to a deposition subsequently to be read, which drawing was admitted in evidence and marked "Plaintiff's Exhibit P."

[illegible]



POWER HOUSE
Ship Repair & Shipbuilding
Grand Trunk Pacific R.

U.S. & CAN. AMERICAN BRIDGE



79	76	77	70° 70'
80	71	72	73° 75'
81	72	73	76° 10'

(Bill of Exceptions—Testimony of C. McGonigle.)

Thereupon witness testified, referring to Plaintiff's Exhibit "P," that it showed another of the main trusses to the machine shop, blacksmith shop and foundry; that it showed the truss to be shipped knocked down in about twenty-one (21) pieces; that customarily it would be shipped in four (4) pieces, of which the larger two (2) pieces would be approximately twenty-two (22) feet long by about five (5) feet deep; that the customary size of the steel shown on Plaintiff's Exhibit "P" would be about twenty (20) by five (5) feet, and that the dimensions of the upper part of the crane column, shown on Plaintiff's Exhibit "F," were five (5) feet by thirty-nine (39) feet.

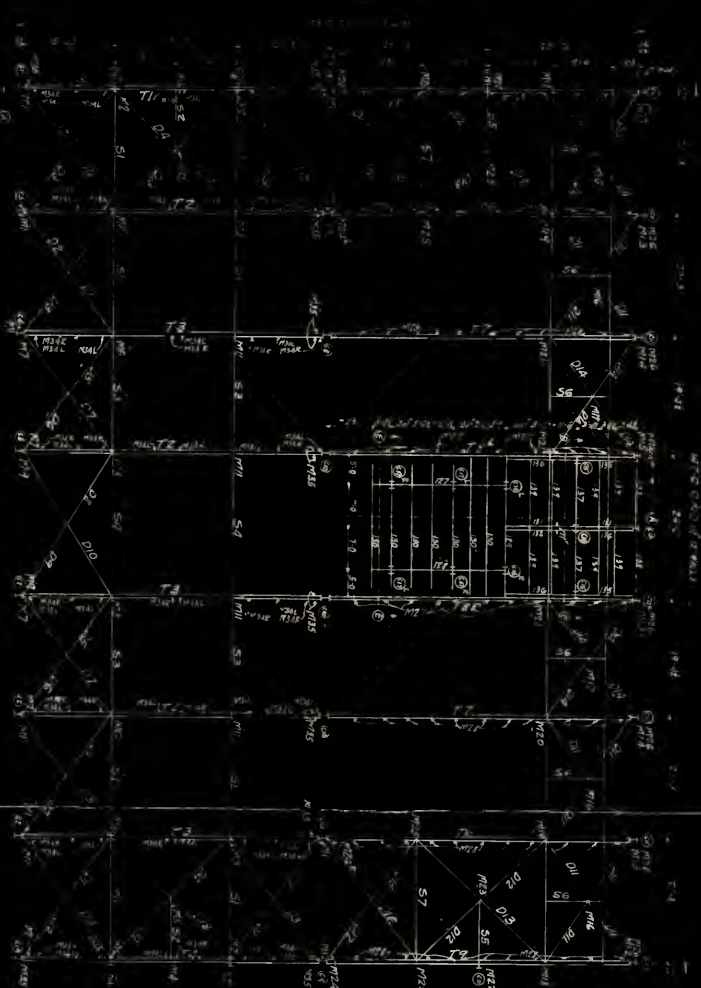
Witness further testified that in his business as contractor, he had had occasion to examine plans and make estimates on the cost of steel erection; that customarily he had not used the specifications in making those figures; that the plans generally show what work is required; that aside from painting, it is understood that work has to be riveted satisfactorily; that in constructing steel work, the main thing is to have the rivets well driven and tight, and in dry dock work the rivets must be water tight and very often have to be caulked afterwards.

Thereupon plaintiff offered in evidence a drawing, which had been attached to a deposition subsequently to be read, which drawing was admitted in evidence and marked "Plaintiff's Exhibit Q."

(Bill of Exceptions—Testimony of C. McGonigle.)

Thereupon witness testified, referring to Plaintiff's Exhibit "Q," that it showed a drawing of the power house trusses; that it might be either a lean-to truss or a main truss; that the drawing showed the truss to have been completely fabricated in the shop; that the truss was made up of two (2) pieces, one (1) piece twenty-two (22) feet long by six (6) feet six (6) deep, and the other about twenty-two (22) feet long; that the entire length of the trusses would be about forty-nine (49) feet; that the other section of the truss was longer but shallower; that the truss would be considered a lean-to truss.

Thereupon plaintiff offered in evidence a drawing, which was identified by the witness, received in evidence and marked "Plaintiff's Exhibit R."



SECTION C-C

SECTION D-D

SECTION A-A

POWER HOUSE
SHELL HOUSE
GRAND TRUNK RAILWAY



(Bill of Exceptions—Testimony of C. McGonigle.)

Thereupon witness testified, referring to Plaintiff's Exhibit "R," that it was an erection diagram of the power house, showing the number of trusses and how it should be erected.

**(Cross Examination of Charles McGonigle
for Plaintiff)**

Upon cross examination, witness further testified that he was financially interested in plaintiff company; that he had been connected with the Cambria Steel Company as structural draftsman in the office for the shops; that he had been connected with the American Bridge Company as draftsman and checker of drawings, making shop details and general plans; that he had been connected with the Garry Iron & Steel Company in a similar capacity, and with Milliken Bros. in the detail department in the office, making similar plans, also designing small structures similar to these, and office buildings, then in the contracting department, in New York, San Francisco and Portland; that since he had left Milliken Bros. he had been contracting on his own responsibility with the plaintiff company and also for himself.

Witness further testified that he had not had any contracts exactly similar to the contract involved in this case, but had had contracting in structural steel work, for example, the umbrella sheds for the Northern Pacific Terminal Company in Portland, for some steel on the Pittock Building, and on

(Bill of Exceptions—Testimony of C. McGonigle.)

the Telephone Building; that, as contracting agent for Milliken Bros., he was assistant to the contracting engineer in San Francisco, and in Portland was in charge of the office.

Witness further testified that the steel which he handled for Milliken Bros. was generally shipped by water, sometimes over the American-Hawaiian Steamship Company and sometimes over other lines; that the vessels in which the steel came varied in size; that the American-Hawaiian Steamship Company used to ship their steel across the Isthmus; that before they stopped shipping to Portland, they were shipping by the Panama Canal; that sometimes they shipped around the Horn, but that witness could not remember receiving any steel brought around the Horn on ships.

Witness further testified that most of these trusses would be stowed in the hold, through the hatchway; that he could not say off hand, without making a diagram, how long the hatchway would have to be in order to take the largest of these trusses; that generally when steel is lowered into the hold of a ship, one end is lowered down then pulled in, so that sometimes they can get a large piece in, larger than the hatchway would show.

Witness further testified that he did not know whether nearly all of these ships had two decks or not; that he did not know whether they had an amidships deck; that he could not say whether an amidships deck would interfere with loading; that

(Bill of Exceptions—Testimony of C. McGonigle.)

he did not know how deep these ships would have to be to take this steel all assembled and riveted together, but that to his knowledge there had never been any question about pieces of that size.

Witness further testified, that the trusses which came riveted together were different from the trusses which came knocked down, in that the latter had peaks, whereas the former had not; that whether or not a peak truss was less strong than a truss without a peak depended to a great extent upon the depth of the truss; that a peak truss would be loaded on a car with the top chord, that is the longest side down, just different from the way it would stand in the building; that he thought a five foot deep truss could be put on a car lying down flat; that he thought another similar truss could be safely put on top of it; that he thought there would be no danger of its buckling as long as it was not loaded too heavily; that if a load were put on the center of one of those pieces, it would probably buckle it; that he did not think there would be any danger of that, if it were loaded in a ship.

Witness further testified that he did not know that there was a movement of cargo on a ship; that he did not know that bulk grain cannot be shipped around the Horn, because it shifts, that he never heard that; that he supposed that if all this steel were to be shipped in one vessel of a capacity of perhaps five thousand tons, it would be put into the hold; that he did not know that, when these trusses

(Bill of Exceptions—Testimony of C. McGonigle.)

are to be shipped by water, provision is always made for carrying them on deck; that he had had steel come into Portland by boat; that practically all of the steel for Milliken Bros. came to the Pacific Coast by boat, and steel for the County Court House, Lincoln High School and the Oregon Hotel came by boat; that he did not remember whether that steel which came by boat was a complete cargo or not, that he supposed they had a general cargo with it; that he did not know whether, if there were a general cargo along with the steel, it could be stowed so as to protect the steel, but that it sounded reasonable; that he did not know what would be done to protect a cargo altogether of steel, but supposed it could be done carefully.

Witness further testified that the only steel which he ever had in Portland coming by water came from Milliken Bros., whose plant is on the seaboard; that Milliken Bros. generally lighter the steel to the American-Hawaiian dock, as their plant only had about eight feet of water; that he did not know who loaded the steel for Milliken Bros. on the ships, or whether they furnished experienced men who understand how to handle steel; that he did not know how many of these trusses could be stowed in the hold of a ship of five thousand tons; that it all depended upon the weight of the trusses, but that he could not judge such weight; that he did not know whether these trusses could be carried cross-wise of the boat, but supposed it would depend upon

(Bill of Exceptions—Testimony of C. McGonigle.)

the width of the boat, although he did not know; that he did not know what an amidships deck was; that he had been in the ships often and supposed they were liable to have several decks; that he did not know what a 'tween deck was; that he knew that Milliken Bros. shipped steel into Portland by water, trusses as large as these, but he never paid any attention to where they stowed them on the boat; that he thought they were below deck.

Witness further testified, referring to plaintiff's Exhibit "D", that the gusset plate shown thereon was shipped loose; that it also showed at least two (2) small angles also shipped loose; that he did not say anything in his former testimony about the angles, but said that the gusset plate can be riveted up; that he could not tell whether the angle should be riveted up or should come loose; that he could not tell whether the angles ought to be riveted on or not; that it might be more convenient for erection to have that angle loose, that sometimes having an angle loose facilitates erection; that the steel shown on Plaintiff's Exhibit "D", including two small angles, large gusset plates, the main member, and the two small gusset plates, should come in six (6) pieces; that in his former testimony he meant that the large gusset plate should have been riveted to the main body of the strut; that he could not say whether the two small gusset plates should have been riveted on; that it looked to him as if the small angle could be riveted on to facilitate

(Bill of Exceptions—Testimony of C. McGonigle.)

erection, although sometimes a small angle like that is left off for the same purpose, to facilitate erection; that the other gusset plate might have been riveted on or could have been loose for shipment; that there was nothing in the drawing to show why the angle was not riveted on; that his impression was that the gusset plate was shipped loose to save riveting in the shop; that he could not see any reason why it was not riveted; that the diagram (Plaintiff's Exhibit "D") did not show any reason why the gusset plate was not riveted.

Witness further testified that he had never had anything to do with shipping steel to foreign countries; that he remembered seeing some of the plans of Milliken Bros. for foreign shipment, but did not remember having a great deal to do with them; that such plans were in the office and that he knew what was going on, but that he never had anything to do with preparing steel for dry docks; that from his experience he knew what dry dock materials should be like; that dry dock work is simply plate work that must be water tight; that he had never had anything to do with actual dry dock work, but he had done work of a similar nature.

Witness further testified that he never paid any attention to the restrictions made by ships upon the loads they take; that he never paid any attention whether the steel was coming by water or by rail; that he had a general idea that there was some arrangement by which ships charged for space if

(Bill of Exceptions—Testimony of C. McGonigle.)

the stuff takes more space than weight, but was not sure what it was; that he did not know in loading a ship they have to have some experienced man to tell where everything should be stowed.

Thereupon the plaintiff, to sustain the issues upon its part, called as a witness one SAMUEL HOLMES, who was duly sworn and testified as follows:

**(Direct Examination of Samuel Holmes
for Plaintiff)**

Witness testified that he lived at 1144 East Yamhill Street, Portland, Oregon, and was a structural steel worker connected with the Northwest Steel Company just now; that he had been in structural steel work for about thirty years, with the Hay Foundry Works, New Jersey, the Pacific Roller Mill Company, Patterson, New Jersey, the Payne Bros. Company, Newark, New Jersey, Robert W. Hunt & Company, New York City, and the Northwest Steel Company; that in his business with these different concerns he had checked up material for ocean shipment to foreign countries; that the condition in which steel is shipped by boat to foreign countries or to the Pacific Coast here, in reference to its being fabricated, depends upon the specifications, what the parties agree to the shipment of, how it should be shipped; that the question was,

(Bill of Exceptions—Testimony of Samuel Holmes.)

where the steel had to go, close in to the port of discharge or to the interior; that if there was nothing in the specifications with reference to the manner of shipping, it took the usual course. Witness further testified that steel usually comes in the ordinary way as a knocked down shipment; that how much of it would be knocked down depends on the design of the material.

Witness further testified, referring to Plaintiff's Exhibit "B", that the drawing showed that particular truss to be knocked down; that from his experience he would say that if the destination of that steel were not far from port, it ought to be riveted together; that, according to the drawing, this steel came in a lot of pieces; that customarily it would come in four (4) pieces; that from the drawing the truss looks to be in about twenty-two (22) pieces.

Witness further testified, referring to Plaintiff's Exhibit "C", that the gusset plate thereon shown was riveted to the steel.

Witness thereupon testified, referring to Plaintiff's Exhibit "B", that the largest of the four (4) pieces in which it could be shipped as customary would be about twenty-eight (28) feet long and a little more than six (6) feet deep.

Witness thereupon testified, referring to Plaintiff's Exhibit "D", that it showed the gusset plate to be loose; that that gusset plate should be riveted on; that he did not know what the connections

(Bill of Exceptions—Testimony of Samuel Holmes.)

were, but that it appeared from the drawing that the gusset plate could be riveted on; that if the gusset plate were riveted on, the dimensions of that piece of steel would be about thirty (30) feet long by five-eighths ($\frac{5}{8}$), by seven (7) feet three (3) deep; that it would be customary to ship the gusset plate riveted on, but that he did not know the manner of erection and it might have to be sent loose for different purposes; that, looking at it the way it was, if they could get the other member in by riveting that, it should be riveted; that it is not the custom to leave all the riveting that can possibly be done to be done in the field; that the custom is to do as much riveting in the shop as possible.

Witness further testified, referring to Plaintiff's Exhibit "E", that the strut for the crane in the ship shed thereon shown came knocked down; that the strut was twenty-nine (29) feet long by seven (7) feet deep; that from his experience and taking into consideration the dimensions of the strut, it was cheaper to have a strut of that kind come riveted up rather than knocked down, and customary in the fabricating part of it, but that he did not know about the shipping part; that if nothing were said about it, that strut would be expected to come together intact.

Witness further testified, referring to Plaintiff's Exhibit "F", that it showed a strut for the ship shed completely fabricated, about thirty-seven (37)

(Bill of Exceptions—Testimony of Samuel Holmes.)
feet long by five (5) feet deep; that they send out struts riveted up in that way.

Witness testified, referring to Plaintiff's Exhibit "O", that it showed a lean-to truss knocked down, about twenty-two (22) feet long by eight (8) feet leep; that the vertical member would, under customary conditions, be taken off for shipment; that under customary conditions that truss would be shipped in two (2) pieces; that the drawing showed that it was shipped in nine (9) pieces.

Witness further testified, referring to Plaintiff's Exhibit "P", that it showed a truss knocked down, about seventeen (17) or eighteen (18) feet long by seven (7) feet deep, in about eleven (11) or twelve (12) pieces for half the truss, about twenty-two (22) or twenty-four (24) pieces for the whole truss; that a truss of that dimension ought to come in two (2) or three (3) pieces.

Witness further testified, referring to Plaintiff's Exhibit "Q", that it showed a truss on the power house lean-to fabricated, but broken in two (2) sections; that whether or not it was fabricated in the customary manner depends upon where it was going, that it could be shipped in two (2) pieces or one (1) piece; that the over-all dimension was about fifty (50) feet long for the whole truss and about six (6) feet deep, a little narrower at the other end.

Witness further testified that in his business he had inspected steel for shipment to foreign coun-

(Bill of Exceptions—Testimony of Samuel Holmes.)

tries; that that steel was not in the condition shown by these drawings; that it was more of the bridge work, while this was building work; that gusset plates are riveted to the members, part riveted on, the other part left for the next member; that sometimes some of the gusset plates cannot be sent on, that it just depends upon the design; that sometimes gusset plates are sent bundled up, according to the design.

Witness further testified that, from his examination of the drawings, it would be generally customary to ship those gusset plates riveted on, but, as he said before, sometimes one cannot tell just by looking at the detail drawings; that sometimes these gusset plates are left off for convenience to the erector; sometimes there might be other members going in and they cannot get them in without taking the gusset plate off, and at other times, the gusset plates are riveted on; that mostly nine times out of ten part of the gusset plates are riveted on in the shop.

Witness further testified that trusses, such as he had stated should come customarily fabricated, could be loaded in a boat if the steamship would carry them; that he had seen bridge work loaded in steamers; that he had not seen pieces of steel work as wide as these loaded into boats, because that class of work does not come in bridge work except in portals, and then the work would be about that wide but not as long; that those portals

(Bill of Exceptions—Testimony of Samuel Holmes.)

could be called struts, portal struts, but that they were generally called portals.

Witness further testified that he had taken several contracts for erecting structural steel himself; that erecting and riveting were the same thing; that the only thing he would look at the specifications for, would be that sometimes they call for painting; that erecting work is pretty nearly the same all over,—to erect the steel satisfactorily to the customer, whoever you are doing it for; that a little while ago he took a job by letter and did not see the specifications at all.

**(Cross Examination of Samuel Holmes
for Plaintiff)**

Upon cross-examination, the witness testified that he had been working for the Northwest Steel Company about seven and a half years all told, but had been away from them about two years; that the 29th of the previous month they had sent for him to come back; that before that, he was down at Willapa Harbor, putting up a bridge for the Cowlitz Bridge Company; that before that he was in business for himself in Portland, ever since he had left the Northwest Steel Company about two years ago; that the Northwest Steel Company do not make any ocean shipments; that they ship entirely by rail, except on the river steamers; that if this kind of stuff was shipped on river steamers, it would have to be put on deck. Witness further

(Bill of Exceptions—Testimony of Samuel Holmes.)

testified that before he came out to this coast, his experience had all been in or around New Jersey and New York, superintending plants located on the seaboard; that the stevedores loaded the vessels; that these stevedores were not employed by the plant.

Witness further testified that never in his experience had he shipped a full cargo of steel; that he had never seen a ship loaded with a full cargo of steel, but that he had seen a full cargo of plain material, that is not fabricated, as this steel is all fabricated; that he had never seen a vessel completely loaded with fabricated material; that in his judgment it would be possible to load a ship altogether with fabricated material; that he would put these trusses in the ship's hold, taking them down the hatchway. Witness further testified that his experience on export shipping had been chiefly with bridge material, and that the steel he had seen loaded on vessels had been bridge steel; that at one time he had seen a little bit of building material of this character go to Europe.

Witness further testified that he did not know very much about the ships' regulations in regard to loading, but that he had seen a lot of steel loaded; that how the trusses would be put in the ship, depended on the decks and the deck room; that whether the trusses would be laid down or stood up, depended on the deck; that he might stand them up on end and pack them up on each side of the

(Bill of Exceptions—Testimony of Samuel Holmes.)

hold until the hatch was full, or, if there was plenty of room, lay them down; that these trusses would be laid down, one on top of the other, without injuring them; that they would not be liable to buckle or be injured while in the ship, the chances of buckling were when they were coming out, not so much when going in as when coming out; that he was speaking now of any kind of steel. Witness further testified that if the trusses were not upright but were all tilted at one angle, it would have no effect at all, but that there must be some packing or blocking to hold them up; that if they were put in the ship's hold, one truss would be set up beside the side of the vessel, the next one against it, that they would be jammed in until they worked up to the center, and then they would be keyed in, the same as putting a keystone in; that a ship's hold could be loaded that way. Witness further testified that he was not a sailor; that he did not see why the ship would be absolutely rigid and would not give; that the fact that there would be no way for the ship to give, would not make any difference to the ship.

Witness further testified, referring to Plaintiff's Exhibit "D", that it was another gusset shown thereon, not riveted; that the drawing showed an angle, not riveted; that he did not know why they were not riveted; that he did not see anything on the drawing which would show why the other gusset plate and the angle were not riveted on.

(Bill of Exceptions—Testimony of J. H. McGregor.)

Thereupon the plaintiff, to sustain the issues upon its part, called as a witness one JOHN HAROLD MCGREGOR, who was duly sworn and testified as follows:

**(Direct Examination of John Harold
McGregor for Plaintiff)**

Witness testified that he lived in Portland; that he was an inspecting engineer for Hildreth & Company of New York, at the present time inspecting Alaskan railroad material for the government, and the structural steel in the Auditorium; that he had been engaged in inspection work of steel for about eleven years, four years chief draftsman and superintendent for the Middletown Car Works at Middletown, Pennsylvania, for four or five years chief engineer for the Central Inspection Bureau, No. 17 State Street, New York, two years erecting engineer for Wasson Power & Manufacturing Company and the Middletown Car Works in the Argentine Republic, about a year in Brazil, and with his present employers for the past six years; that he had seen steel shipped out by water that was used for building purposes.

Witness further testified, referring to Plaintiff's Exhibit "B", that it showed a truss to be assembled and riveted in the field, in about twenty-one (21) or twenty-two (22) pieces for the whole truss; that this exhibit showed half the truss; that he did not think it good shop practice to ship a steel truss in

(Bill of Exceptions—Testimony of J. H. McGregor.)

that way; that it was not the custom for the contracting erector to ship it in that way; that it should be assembled and driven up; and that there was a lot of shop work on it that ought to have been complete; that that truss should have been shipped, according to custom, in four (4) pieces.

Witness further testified, referring to Plaintiff's Exhibit "C", that it showed the gusset plate riveted on; that that was the customary way in which he would expect it to come.

Witness further testified, referring to Plaintiff's Exhibit "D", that it showed steel to be riveted in the field, in six (6) pieces; that that was not the customary way in which that steel would be shipped out; that there was a lot of shop work which ought to be performed on it.

Witness further testified, referring to Plaintiff's Exhibit "E", that it showed a strut for the ship shed knocked down, riveting and assembling to be performed in the field; that he did not think that that was the customary way in which the steel should be shipped from the erector to the contractor.

Witness further testified, referring to Plaintiff's Exhibit "F", that it showed a strut for the ship shed riveted up complete; that that was a satisfactory way to ship it.

Witness further testified, referring to Plaintiff's Exhibit "O", that it was one of the trusses on the lean-to to the machine shop and boiler shop, that it

(Bill of Exceptions—Testimony of J. H. McGregor.)
was shown partly fabricated, to be assembled and driven in the field; that he did not think it was fabricated in the customary way.

Witness further testified, referring to Plaintiff's Exhibit "P", that it showed one of the trusses on the smaller buildings not fabricated, that according to his opinion it should be assembled and driven in the shop.

Witness further testified, referring to Plaintiff's Exhibit "Q", that it showed trusses for the lean-to and power house assembled complete, but broken in two (2) pieces; that that would be a satisfactory way to ship it.

Witness further testified that he had seen steel shipped in the way this steel ought to have been shipped and put in a boat, for example, the rolling equipment for a railroad in the Argentine Republic, in which there were six hundred and fifteen (615) steel under-frames; that he worked on the fabrication of this material in the shop, went to Argentine and received the stuff at Rosario, and then erected it in the interior; that these frames were built up structural shapes riveted together complete, eight (8) feet by forty (40) feet; that he had had the inspection of a sugar plant that went to Porto Rico fabricated, not only riveted complete in the shop, but the parts assembled for the complete field connections, at least the holes punched an eighth ($\frac{1}{8}$) of an inch small, the parts assembled in the shop and reamed to size, to make sure that

(Bill of Exceptions—Testimony of J. H. McGregor.)

the material would go together upon its arrival in the field; that another time when he was with Miliken Bros., the steel for a Union Station at Buenos Aires was shipped and the stuff assembled in the usual practice of assembling that sort of material.

**(Cross Examination of John Harold
McGregor for Plaintiff)**

Upon cross-examination witness testified, referring to Plaintiff's Exhibit "F", that it showed steel riveted up complete; that Plaintiff's Exhibit "Q" was also riveted complete; that he could not see any reason why they should be riveted complete and the others should not be; that there was no logical reason to his mind why the roof truss should not be riveted just the same as the other frame structure; that there was no reason why the steel shown in Plaintiff's Exhibit "E" should not be riveted complete when the steel shown on Plaintiff's Exhibit "F" was riveted complete; that as a matter of fact, it should all have been riveted; that he could not see any reason why one was and the other was not.

Witness further testified, referring to Plaintiff's Exhibit "D", that it showed the gusset plates shipped loose, also some angle plates shipped loose, and another gusset plate, down toward the middle of the diagram, shipped loose; that the gusset plates should have been riveted up to the frame but that, as concerned the angle, it might be that when it was in the field the piece set in between the gusset

(Bill of Exceptions—Testimony of J. H. McGregor.)

plate and the angle, and if that were the case, which witness did not know, not being familiar with it, if these angles were riveted in the shop they would have to be cut off again, in order to get that plate under there, and in that event the angle would have to be left off, because it would be useless to rivet it in the shop and cut it off in the field; that he could not see from the drawing whether the other piece went in there or not, that the drawing did not show.

Witness further testified that the drawing, which showed the big gusset plate, showed the reason why the gusset plate was riveted on, because in putting the hole through there the plate had to be on in order to make the hole a good fit; that the pin hole there made a difference, but that they could have shipped that loose if they had wanted to; that if that had been shipped loose, to be driven in the field, he would have passed it as an inspector if it was a good job; that a good job could have been done on it in the field, with the ordinary equipment that they had there; that they could have put the pin in and held the plate where it belonged, then driven the rivets, although he would not say that it was good practice to do it that way, although a good job could have been made out of it if men who understand their business were to do the work.

Witness further testified that, so far as concerned any likelihood of the gusset plates bending, it would have been logical to have shipped the one that was driven loose, it being a bigger gusset plate

(Bill of Exceptions—Testimony of J. H. McGregor.)

than the smaller plate; that there is no danger of bending or twisting these gusset plates in shipment if they are handled properly; that there was just as much danger of its being damaged as if witness should ship a trunk to Philadelphia, which would be liable to be broken up in the baggage car; that there was no more danger, that he could see, of this stuff being twisted when shipped by a vessel if it were riveted together, than if shipped in any other way; that he did not know that there was any more danger of its becoming twisted if it were riveted, than if it were not riveted; that he did not know that the more the stuff was riveted together, the more danger there was in shipping it that it might become twisted or buckled; that a lot of stuff might be shipped loose and something might be dropped on it and a lot of angles broken up.

Witness further testified that if the steel would get twisted going up there, it would have to be straightened out; that he could not tell what would have to be done until after he saw how it was bent; that if it were a light gusset plate, it could be just straightened up; that he never saw a truss bent so he could not tell how that would be straightened up; that he never had any trouble with trusses buckling or bending in the Argentine; that once in a while there would be something damaged; that stuff cannot be shipped and received perfectly no matter how it was assembled, one way or another.

Witness further testified that he was not a steve-

(Bill of Exceptions—Testimony of J. H. McGregor.)

dore, but knew how a lot of the steel came in the Argentine, and that it came in the hold; that these under-frames were eight (8) by forty (40) feet, and came in the hold, one set upon the other; that they were built up structures, made up of channels and I-beams, angles and plates, rectangular, not roof trusses, a different proposition, a frame structure, for box, bunk and different type cars. Witness further testified that the pieces composing the under-frames were ten (10) inch channels, instead of twelve inch channels like those on the outside of these trusses; that these trusses were built out of angles four (4) by six (6) by one-half ($\frac{1}{2}$) inch, and six (6) by eight (8) inch channels on the bottom; that the under-frames he had in the Argentine had a channel on each side, not ten (10) inch channels, but twelve (12) inch channels; that he did not know whether they were ten (10) inch or twelve (12) inch channels; that he could not tell what was the cross section of these channels; that the strength of the steel and its liability to bend would depend upon its thickness, that the stiffer the section the less likelihood there would be to bend.

Witness further testified that on one boat in Rosario, he saw the frames lying under the hatch built up one on top of the other, lying flat; that these smaller sized trusses would be all right lying flat; that he would not recommend laying the other truss flat, but would ship it standing up. Witness further testified that, if he were supervising

(Bill of Exceptions—Testimony of J. H. McGregor.)

the loading of that stuff, he would have the trusses shipped standing up, one half setting up and the other half right alongside it, so as to make a rectangle; that he supposed they would keep those trusses from moving about in the ship the same way that the under-frames were kept; that he did not know how it was done; that the cargo has to be fastened in; that they had no trouble with the under-frames moving; that he did not know how they fastened them, but that they did not move; that if they did move, they did not do any damage.

Witness further testified that he had sailed on ships several times, seen them loaded, and inspected material that went into them, but that he did not know anything about the regulations of ships or the rules regarding the loading of them.

Thereupon plaintiff rested its case.

Thereupon the defendant, to sustain the issues upon its part, offered in evidence the deposition of one WILLIAM HENRY STRATTON, taken according to stipulation, at No. 71 Broadway, Borough of Manhattan, City, County and State of New York, and in the Southern District of New York, on the 31st day of August, 1916, before John H. Gewecke, a Notary Public in and for said State, County and District, which deposition was taken upon written interrogatories, in answer to which witness testified as follows:

**(Deposition of William Henry Stratton
for Defendant)**

Witness testified that he resided at 194 Prospect Street, Ridgewood, New Jersey; that his occupation was civil engineering; that he had been engaged therein since 1888, when he graduated from Cornell University, from the course of Civil Engineering; that since that time he had had positions as civil engineer on the railroad, survey, maintenance of way work, as bridge draftsman, engineer in charge of drafting room, assistant to President, assistant to Vice President, in charge of operating, assistant to Division Manager of Sales, and in charge of the bridge and building department; that he had been connected with companies manufacturing, erecting or selling structural steel since 1889; that he was with the Edgemoor Bridge Company as draftsman for one year, with the Berlin Iron Bridge Company as draftsman for two years; as engineer in charge of drawing room for seven years; assistant to the President for one year; that in 1900, when the American Bridge Company was first formed, he became assistant to the Vice President in charge of operation, after the American Bridge Company became a subsidiary of the United States Steel Corporation, he became Assistant District Manager of Sales; and upon the formation of the United States Steel Products Company in 1903, he went with them in charge of their bridge and building department; that he is familiar with all of the classes of steel

(Bill of Exceptions—Deposition of W. H. Stratton.)

construction used in the construction of office or other buildings, dry docks, ship sheds, power houses, bridges, and other forms of railroad and industrial construction.

Witness further testified that structural steel work, which the United States Steel Products Company has sold, has been shipped to practically all parts of the globe, including China, Korea, Japan, Philippines, Hawaiian Islands, Australia, New Zealand, Straits Settlement, Java, India, Africa, Russia, Norway, Great Britain, France, Italy, Greece, Turkey, Iceland, Alaska, British Columbia, the various islands of the West Indies, and the countries in Central and South America.

Witness further testified that the material fabricated in the shop or factory for ocean shipment is not riveted up to the extent that it is when shipment is made by rail; that there were two principal reasons for this,—first, on account of the liability of injury due to the unwieldy character of completely riveted structural steel members and the possibility of their being bent or twisted; second, on account of the general nature of freight which must be paid on steamers on weight or measurement basis.

Witness further testified that structural material intended for water shipment is shipped knocked down; that this refers more particularly to lattice girders and roof trusses; that the general practice is that, if the connection plates are not

(Bill of Exceptions—Deposition of W. H. Stratton.)

too large and do not project too far beyond the main member, they are riveted to the rafter and the bottom chord; that the larger connection plates, such as the shoe plate and peak plate, are generally shipped loose, and on large trusses some of the intermediate gusset plates are shipped loose; that the web members are customarily shipped as simply punched angles, although if there are two or more angles in each member, these are riveted together with their stitch rivets; that all the rafters, the purlin connections, are customarily shipped loose, to be bolted on in the field; that lattice trusses are shipped in the same way, i. e., the top and bottom chords with small gusset plates riveted on them, the larger gusset plates loose and the web members shipped loose; that the girders and trusses fabricated in the shop or factory for ocean shipment are shipped in this way to prevent their being bent and distorted, due to the handling on account of the loading, unloading and storing the cargo, also in shifting cargo which might take place, and furthermore to reduce the expense of ocean freight by keeping the material as near weight basis as possible.

Witness further testified that in shipments by all rail, it is customary to rivet trusses and girders in single sections, limited only by the clearances which the railroads describe for their bridges and tunnels; that in export work, it is customary to ship these trusses and lattice girders knocked

(Bill of Exceptions—Deposition of W. H. Stratton.)

down, as previously testified to; that on plate girder work, it is very frequently necessary for steamer shipment to splice the girders, so as to limit the length of the pieces, while for rail shipment, girders are shipped one hundred or more feet in length; that the "A" shaped columns or large double columns, which are riveted up for rail shipment, are shipped knocked down for steamer shipment.

Witness further testified that he was familiar with the manner in which the detailed plans, known as "shop drawings", are used for the guidance in the shop in making or fabricating structural steel for use in the construction of office or other buildings, dry docks, ship sheds, power houses, bridges and other forms of railroad and industrial construction; that these drawings are followed absolutely in the preparation of steel work; that the template maker prepares his templates from the information given on these drawings; that the template is a wooden or paste-board pattern made from the detailed drawings to full size, indicating the location of all holes and cuts on the shapes or plates which are to be made a part of the member; that these templates are clamped to the steel and the holes and cuts in the shapes and plates are transferred to the steel from these templates; that the laying out of material is done strictly in accordance with the templates which have been prepared from these drawings and from the information contained

(Bill of Exceptions—Deposition of W. H. Stratton.)

on the drawing; that the punching and shop assembling of this contract was done exactly as called for on the drawings; that the riveting and painting is done exactly as the drawings call for; and that in fact the shop details are absolutely the guidance of the shop in the preparation or fabrication of the steel, and that the final, as well as the intermediate, inspection of steel work in the shop is made by comparing this finished work with the designs and details as shown on the detail drawings.

Witness further testified that in preparing shop details for work which is to be shipped by water, it is customary to detail this work so that it will be shipped in its knocked down condition, and to show on these drawings, by their symbols, what are termed open holes, which are the holes which are to be left in the work for field connection; that while, if it were to be shipped by rail, a great many of these connections which were shown as open holes, would be shown as shop riveting, indicating that the pieces were to be riveted up instead of to be shipped knocked down; that the preparation of shop details is influenced and controlled entirely by the knowledge of whether the material is to be shipped by water or rail.

Witness further testified that he was familiar with the shop details prepared for the buildings, dry dock and other structures for the Grand Trunk Pacific Railway at Prince Rupert, which material was included in the contract taken by the United

(Bill of Exceptions—Deposition of W. H. Stratton.)

States Steel Products Company with the Grand Trunk Pacific Railway, which were prepared during the years 1912, 1913, 1914 and 1915; that these shop details were prepared in accordance with the customary and usual method employed in preparing similar shop details for shipment by water, except that there were a number of cases where the shop details called for the work to be riveted when customarily it would be prepared for shipment knocked down.

Witness further testified that the only restrictions which the steamship companies place upon the size and bulk of material are that it must be limited to such size and such weight as they can handle and properly stow, that the governing features of this are the capacity of lifting apparatus, the size of the hatches, and the average room in the hold for properly stowing this material; that as these steamers are differently constructed, there were a very few who have the same limitations, so that the only requirements are to keep them within a general average; that the steamship companies, as a rule, charge for freight on a weight or measurement basis, i. e., so much per gross ton, or so much for forty cubic feet, which must equal one gross ton, and the cubic contents of a member is computed by multiplying its length by its height by its width, regardless of whether the piece is of a rectangular or triangular shape.

Witness further testified that he did not see

(Bill of Exceptions—Deposition of W. H. Stratton.)

the structural steel supplied by the defendant company for use in erecting any of the buildings at Prince Rupert actually shipped, but that he was familiar with the detailed drawings which showed the way in which it was fabricated; that he had also seen the shipping list and the detail drawings showing how the material was shipped knocked down; that the principal items on the machine shop, blacksmith shop, and foundry building were the roof trusses shown on sheets one (1) and two (2), on the power house, the roof trusses shown on sheet number five (5), on the ship shed, the struts shown on sheets number sixteen (16) and twenty-three (23).

Witness further testified that he was in charge of the bridge and building department of the defendant company; that he was connected with the control of construction work carried on by plaintiff company at Prince Rupert, and was interested to the extent of receiving reports about the condition of this contract, receiving complaints from the railroad company in regard to the work, and transmitting such instructions as were necessary to the Portland office of the defendant company to be given to the plaintiff company. Witness further testified that such instructions as he gave the Portland office of the defendant company to be transmitted to the plaintiff company, were based upon requests or demands made upon defendant company by Mr. William T. Donnelly, one of the consulting engineers of the Grand Trunk Pacific Railway, who

(Bill of Exceptions—Deposition of W. H. Stratton.)

had the direct charge of the design and installation of this work for the railroad at Prince Rupert; that the plaintiff company alone was responsible for the carrying out of the orders received from the Grand Trunk Pacific Railway; that during his connection with the erection of this work, he did not receive or act under the orders or instructions of any of the officers or agents of the defendant company.

Witness further testified that he was familiar with the terms and conditions of the contract made by and between the Grand Trunk Pacific Railway and the defendant company during the year 1912 for the furnishing by the defendant company to the Grand Trunk Pacific Railway of certain structural steel; that the original quotation of the defendant company was made to the Grand Trunk Pacific Railway under date of September 12, 1912; that these prices were revised under date of October 21, 1912; that upon the request of Mr. Guest, Purchasing Agent for the Grand Trunk Pacific system, witness went to Montreal with a view to closing the contract for the work and, after several consultations, agreed to the prices which were set forth in an order from the Grand Trunk Pacific Railway under date of September 16, 1912, which order was finally accepted by the defendant company; that the original proposal was based upon shipment from either Pittsburg or Chicago, and shipment from these points by two different routes, one from point of manufacture to New York and thence by steamer to

(Bill of Exceptions—Deposition of W. H. Stratton.)

Prince Rupert, and the other from point of manufacture by rail to Vancouver and by steamer from Vancouver to Prince Rupert; that the price based upon fabrication at Pittsburg and shipment to New York and thence by steamer to Prince Rupert was accepted; that the order consisted of defendant company's building and erecting upon foundation and pontoons furnished by the Grand Trunk Pacific Railway, also included the Canadian duties which were to be paid by the Grand Trunk and deducted from moneys due the defendant company; that the erection was sub-let by defendant company to Poole-Dean Company; that it was the intention a formal contract should be drawn up by Mr. W. T. Donnelly and the defendant company and executed; that witness had several talks with Mr. Donnelly in reference to this contract, but that Mr. Donnelly advised that he had not been able to make arrangements with Mr. Guest to come to New York and go over some points which he had in mind; that under date of January 22, 1913, witness wrote to Mr. Donnelly in regard to the method of payment, in view of the fact that the formal contract had not been drawn up; that Mr. Donnelly made no written answer to this letter, although he had several talks with the witness on the subject; that under date of December 3, 1913, Mr. Donnelly wrote witness a letter in reference to terms of payment, to which witness replied under date of December 5th, 1913, and that this letter was the basis of the bill-

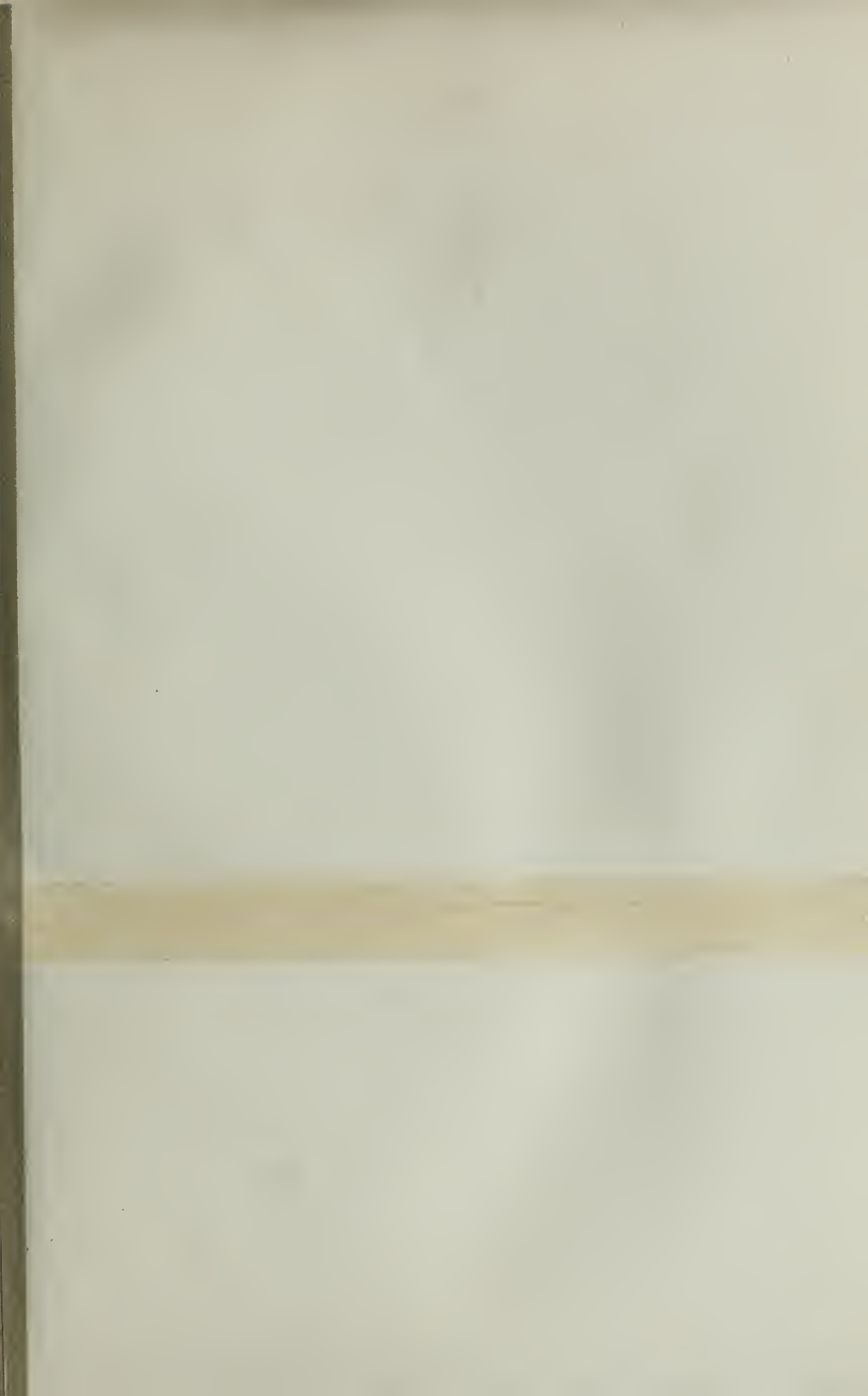
(Bill of Exceptions—Deposition of W. H. Stratton.)

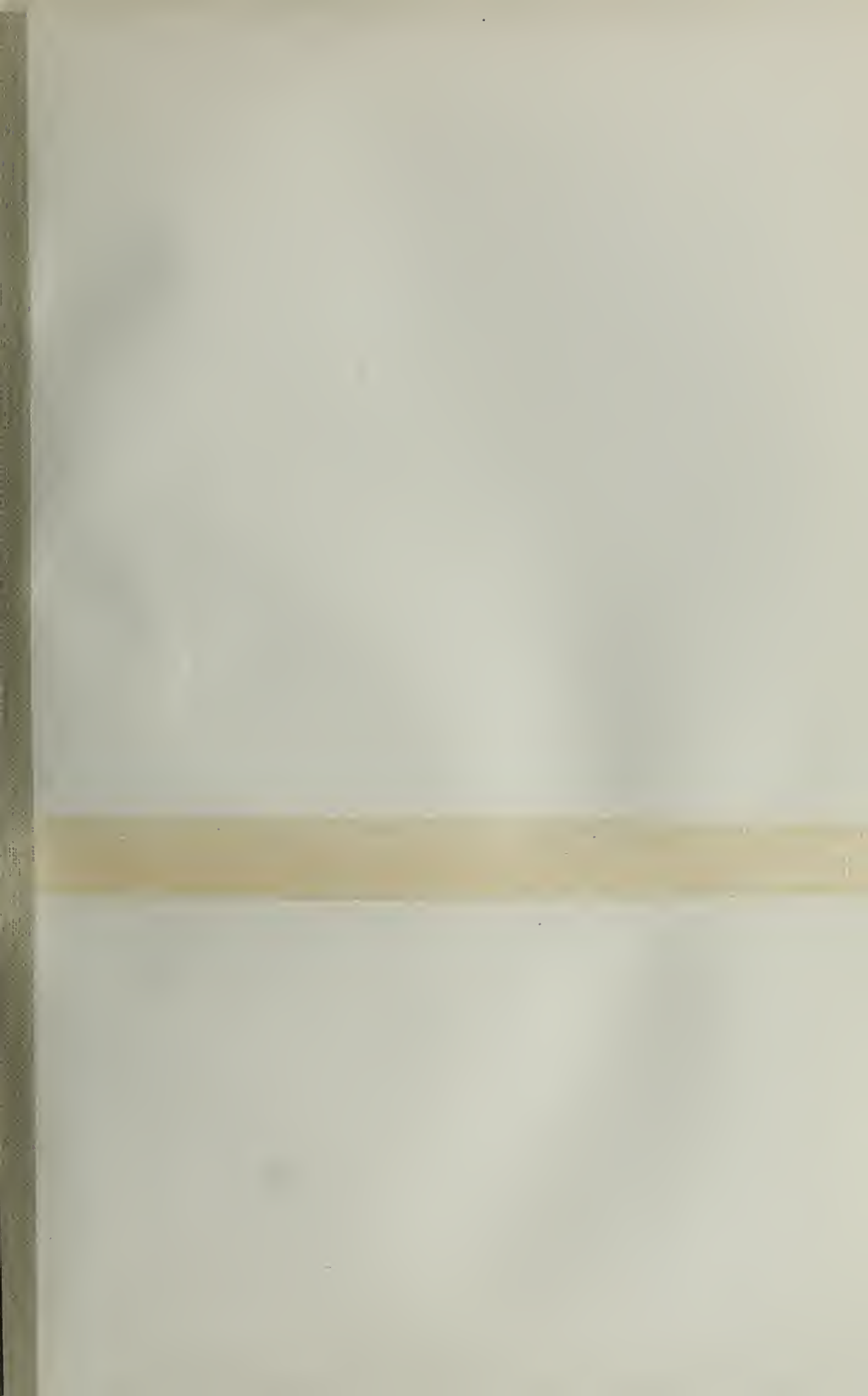
ing of this contract. Witness further testified that it was distinctly understood at the time this contract was taken, that Mr. Donnelly, as consulting engineer for the Grand Trunk Pacific Railway, was in charge of this work, and that defendant company were to look to Mr. Donnelly for instructions in regard to carrying out portions of this contract.

Witness further testified that the claim of the plaintiff company, amounting to Four Hundred Dollars and Seventy cents (\$400.70), represented extra field work over and above what was called for in the original agreement, and that, as plaintiff company was doing certain extra work for the Grand Trunk Pacific, defendant company requested them to render a bill for this extra work direct to the Grand Trunk Pacific, and that witness had been advised by Mr. Donnelly that he (Mr. Donnelly) approved the voucher for this amount, and that it was forwarded to the Grand Trunk Pacific.

Witness further testified, referring to Plaintiff's Exhibit "P" and Plaintiff's Exhibit "O", that the peak and shoe gussets and work of this character would frequently be shipped loose; referring to Plaintiff's Exhibit "Q", that trusses "T-9", "T-6", "T-7" and "T-8", r. and l., usually are shipped knocked down with the web members all loose; referring to Plaintiff's Exhibit "F", that columns "C-3", "C-4", "C-5" and "C-12", usually are shipped knocked down, and the web members loose.

Thereupon defendant offered in evidence certain







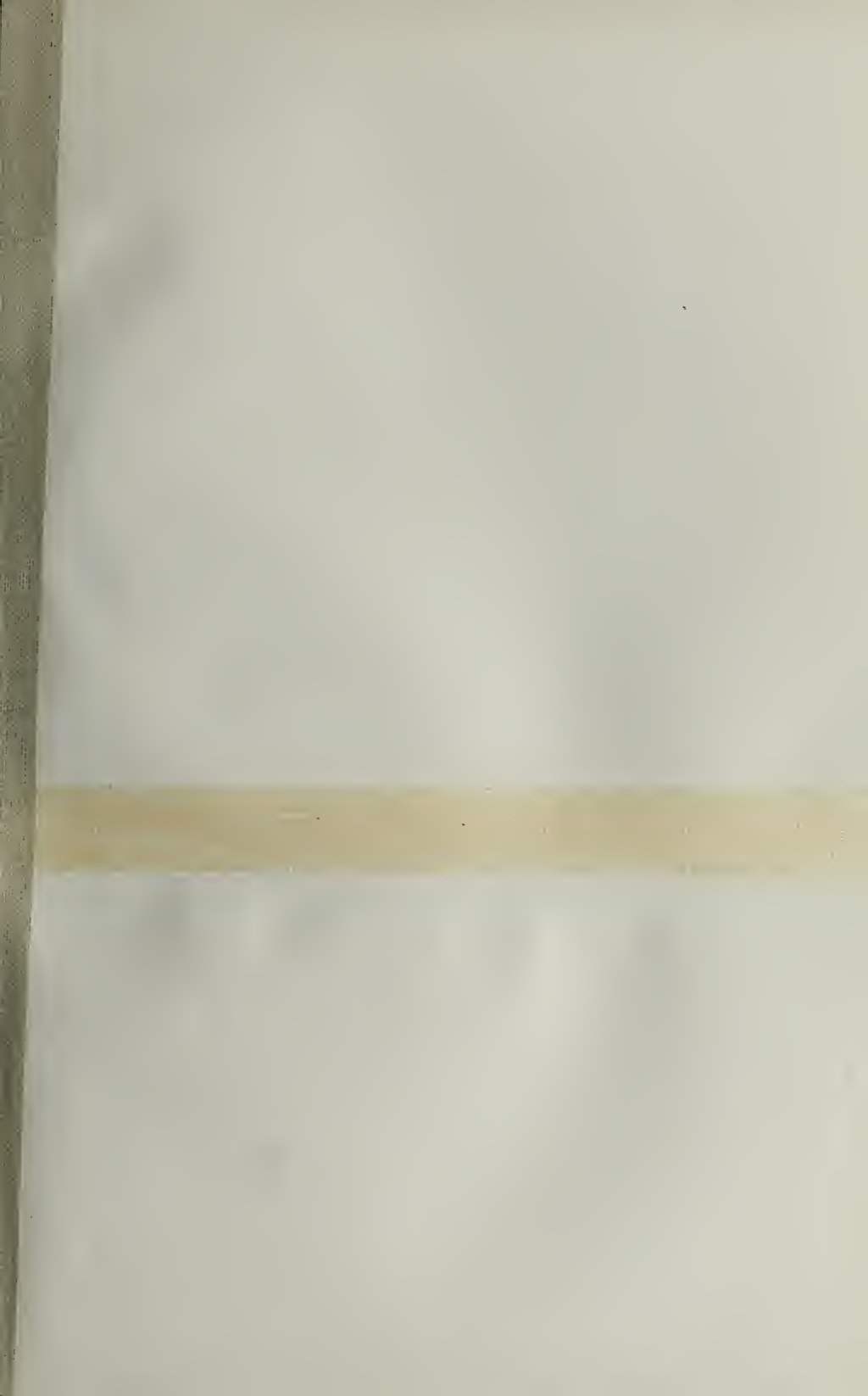
STRUTS 333

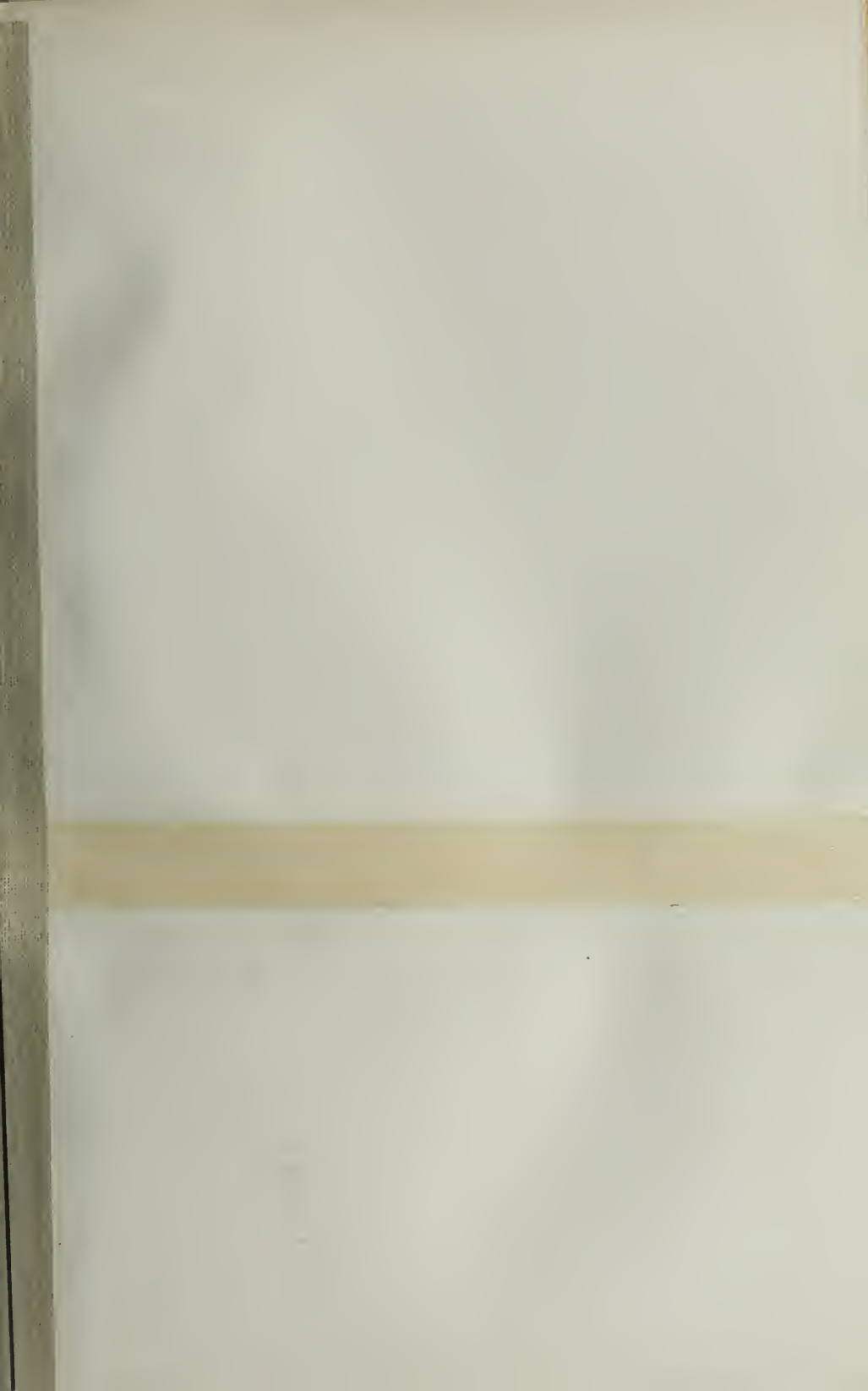


REQUIRED STRUTS	BOARDS
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100	10

STRUTS

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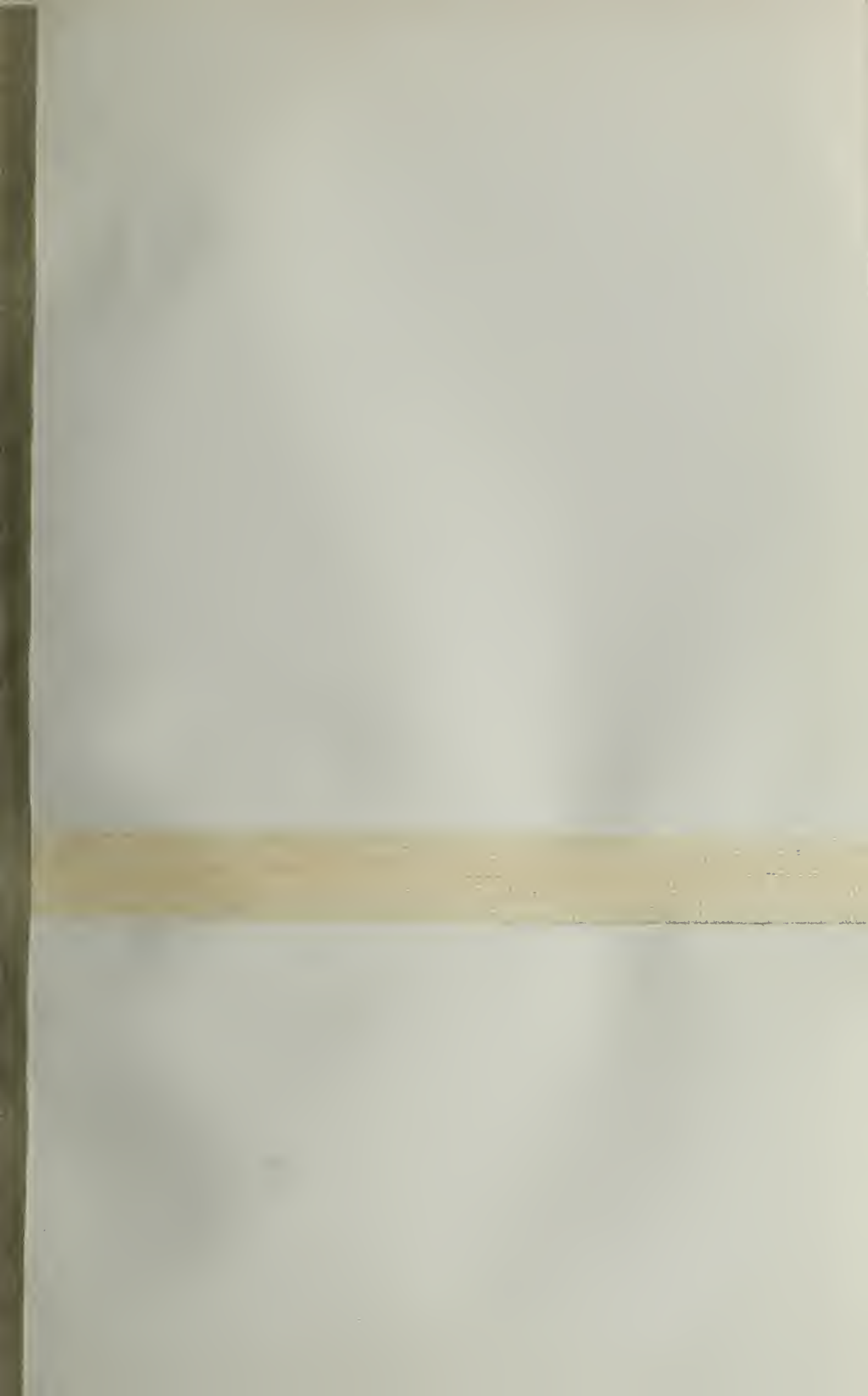


Approved: [Signature]
 Date: [Date]
 American Bridge Co.

SHIP SHED
 Grand Trunk Railway
 1000' x 100' x 100'

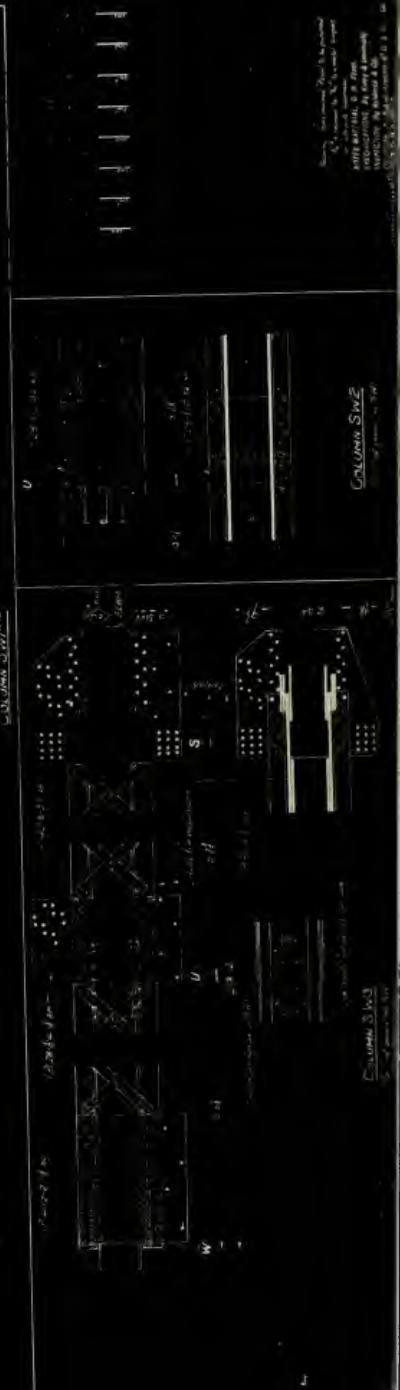












REQUIRED	SW
2 COLUMNS	SW
2	SW
4	SW
1 COLUMN	SW
1	SW

CONCLUSIONS

DEHS 6/17/2

Ship Repair & Shipbuilding Plant

Ship Repair & Pacific Ship Repair
Vessel Trim

RESEARCH QUESTIONS

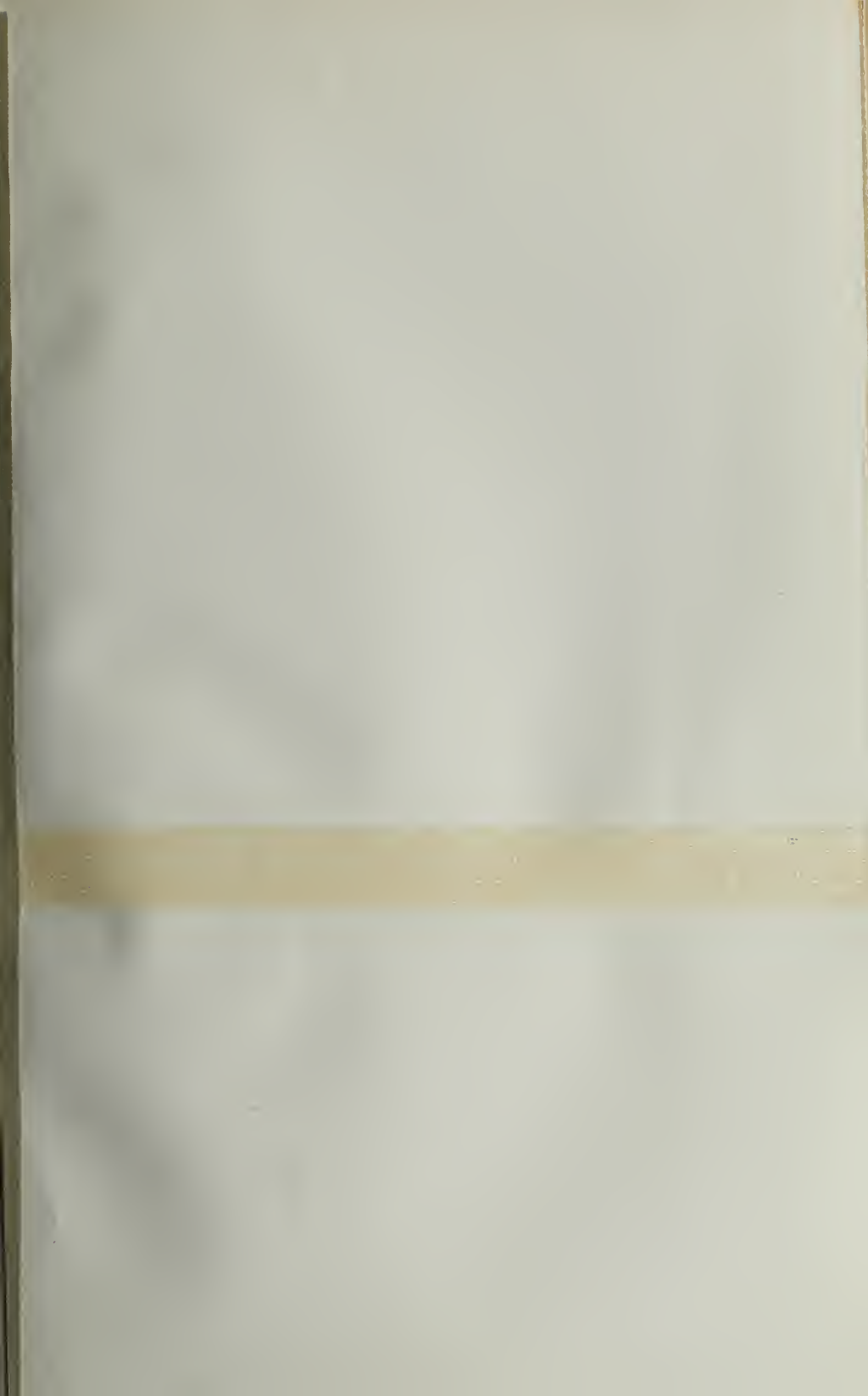
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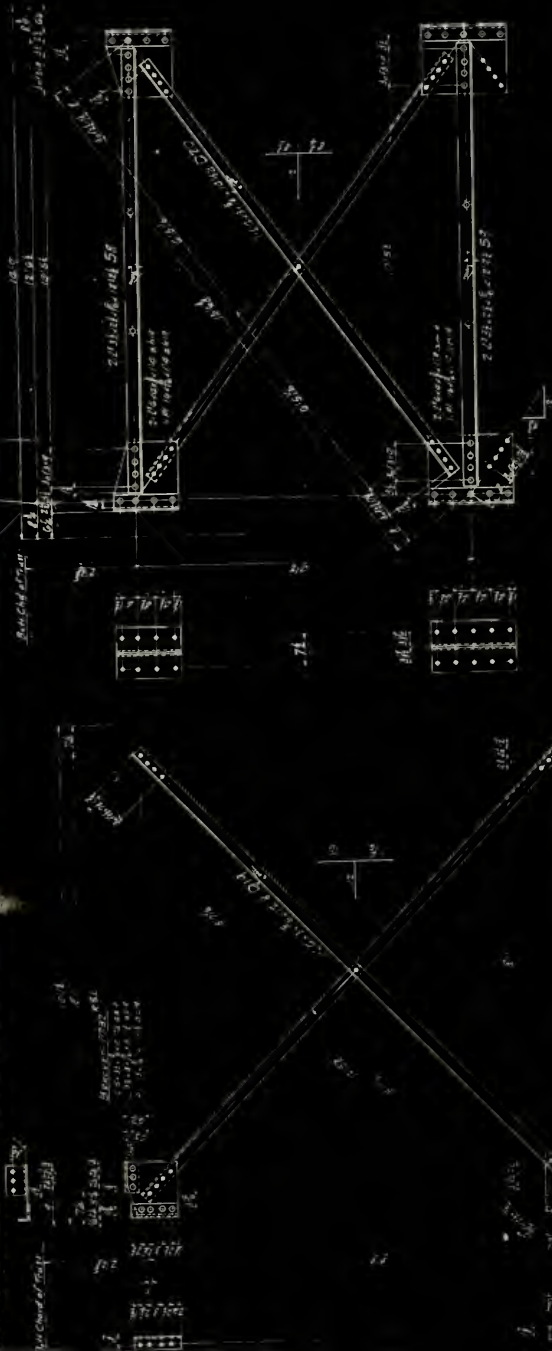
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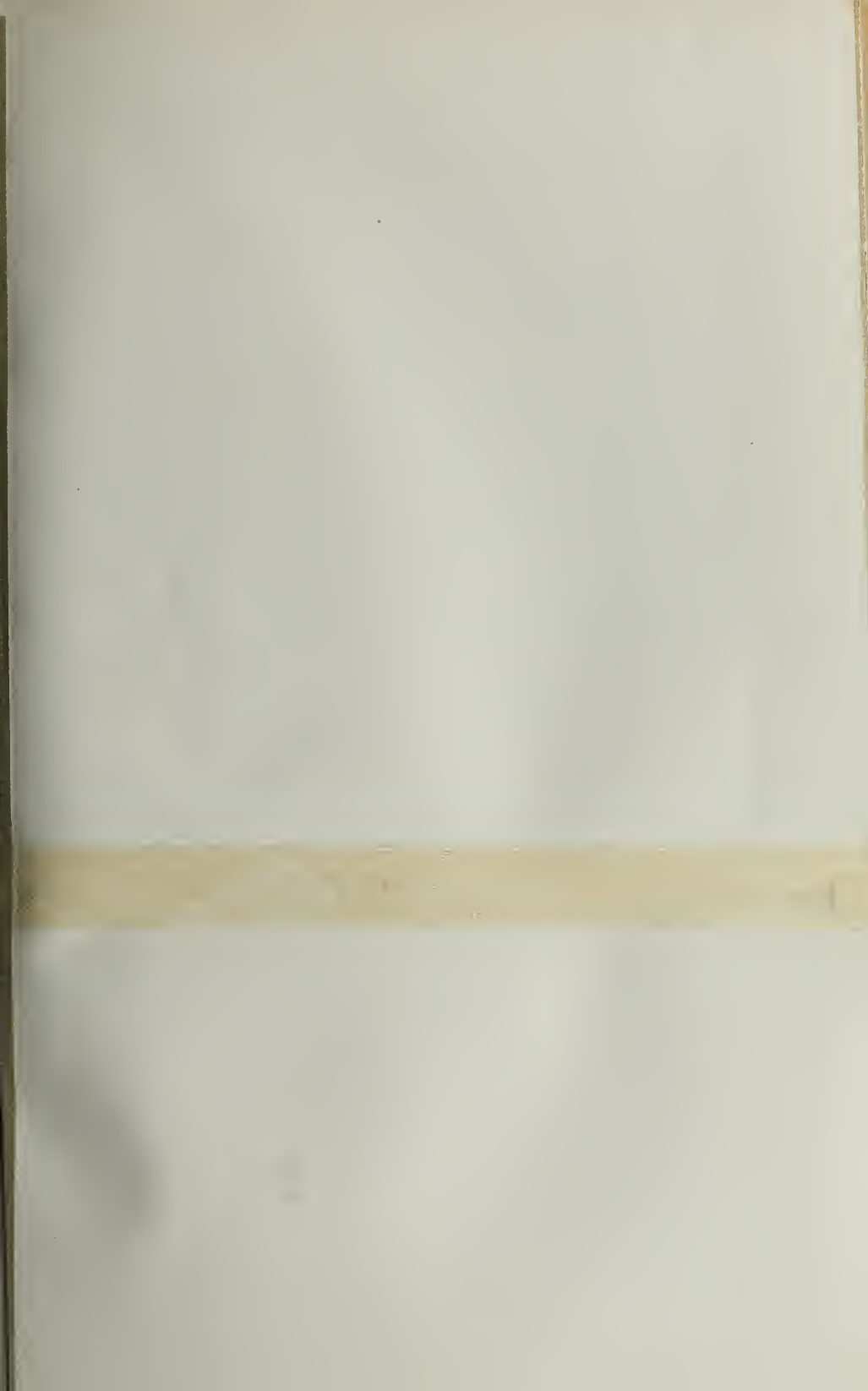


Defendant's Exhibit 9



REQUIRED			
12	DISCOUNT	D70	
7	"	58	
6	STREET	59	
3	"	50	
4	"	MIS	
2	BEACHT	MIS	
2	"	MIS	
8	"	MIS	
2	"	MIS	
2	"	MIS	

POWER HOUSE
Site of Repair at Single Building Plant
Grand Trunk Pacific Railway
AMERICAN BRIDGE CO.



Defendant's Exhibit 9



REQUIRED	TH
5	C37 *
1	C35 *
1	C35 *
1	C36 *
1	C37 *
1	C38 *
1	C39 *
1	C40 *
1	C41 *
1	C42 *
1	C43 *
1	C44 *
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1	C99 *
1	C100 *

POWER HOUSE
 Slip Paving & Site Building Plans
 Grand Trunk Pacific Railway

Productivity





DATE	DESCRIPTION	AMOUNT	BALANCE
1/1	CASH	100.00	100.00
1/2	SALES	50.00	150.00
1/3	SALES	75.00	225.00
1/4	SALES	100.00	325.00
1/5	SALES	125.00	450.00
1/6	SALES	150.00	600.00
1/7	SALES	175.00	775.00
1/8	SALES	200.00	975.00
1/9	SALES	225.00	1200.00
1/10	SALES	250.00	1450.00
1/11	SALES	275.00	1725.00
1/12	SALES	300.00	2025.00
1/13	SALES	325.00	2350.00
1/14	SALES	350.00	2700.00
1/15	SALES	375.00	3075.00
1/16	SALES	400.00	3475.00
1/17	SALES	425.00	3900.00
1/18	SALES	450.00	4350.00
1/19	SALES	475.00	4825.00
1/20	SALES	500.00	5325.00
1/21	SALES	525.00	5850.00
1/22	SALES	550.00	6400.00
1/23	SALES	575.00	6975.00
1/24	SALES	600.00	7575.00
1/25	SALES	625.00	8200.00
1/26	SALES	650.00	8850.00
1/27	SALES	675.00	9525.00
1/28	SALES	700.00	10225.00
1/29	SALES	725.00	10950.00
1/30	SALES	750.00	11700.00
1/31	SALES	775.00	12475.00
2/1	SALES	800.00	13275.00
2/2	SALES	825.00	14100.00
2/3	SALES	850.00	14950.00
2/4	SALES	875.00	15825.00
2/5	SALES	900.00	16725.00
2/6	SALES	925.00	17650.00
2/7	SALES	950.00	18600.00
2/8	SALES	975.00	19575.00
2/9	SALES	1000.00	20575.00
2/10	SALES	1025.00	21600.00
2/11	SALES	1050.00	22650.00
2/12	SALES	1075.00	23725.00
2/13	SALES	1100.00	24825.00
2/14	SALES	1125.00	25950.00
2/15	SALES	1150.00	27100.00
2/16	SALES	1175.00	28275.00
2/17	SALES	1200.00	29475.00
2/18	SALES	1225.00	30700.00
2/19	SALES	1250.00	31950.00
2/20	SALES	1275.00	33225.00
2/21	SALES	1300.00	34525.00
2/22	SALES	1325.00	35850.00
2/23	SALES	1350.00	37200.00
2/24	SALES	1375.00	38575.00
2/25	SALES	1400.00	39975.00
2/26	SALES	1425.00	41400.00
2/27	SALES	1450.00	42850.00
2/28	SALES	1475.00	44325.00
2/29	SALES	1500.00	45825.00
2/30	SALES	1525.00	47350.00
2/31	SALES	1550.00	48900.00
3/1	SALES	1575.00	50475.00
3/2	SALES	1600.00	52075.00
3/3	SALES	1625.00	53700.00
3/4	SALES	1650.00	55350.00
3/5	SALES	1675.00	57025.00
3/6	SALES	1700.00	58725.00
3/7	SALES	1725.00	60450.00
3/8	SALES	1750.00	62200.00
3/9	SALES	1775.00	63975.00
3/10	SALES	1800.00	65775.00
3/11	SALES	1825.00	67600.00
3/12	SALES	1850.00	69450.00
3/13	SALES	1875.00	71325.00
3/14	SALES	1900.00	73225.00
3/15	SALES	1925.00	75150.00
3/16	SALES	1950.00	77100.00
3/17	SALES	1975.00	79075.00
3/18	SALES	2000.00	810

POWER HOUSE

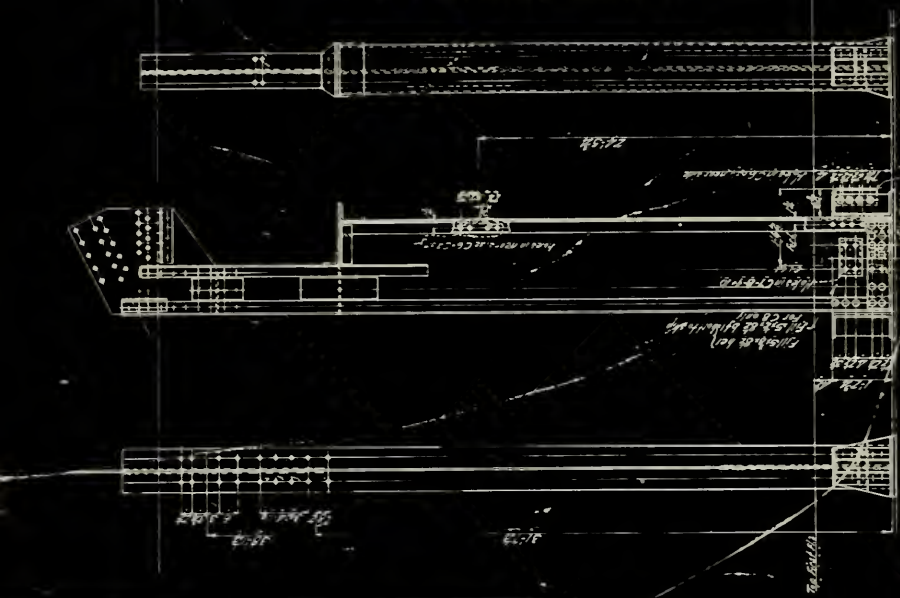
Ship Repair & Shipbuilding Plant
Grand Trunk Pacific Railway

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AMERICAN BRIDGE CO.
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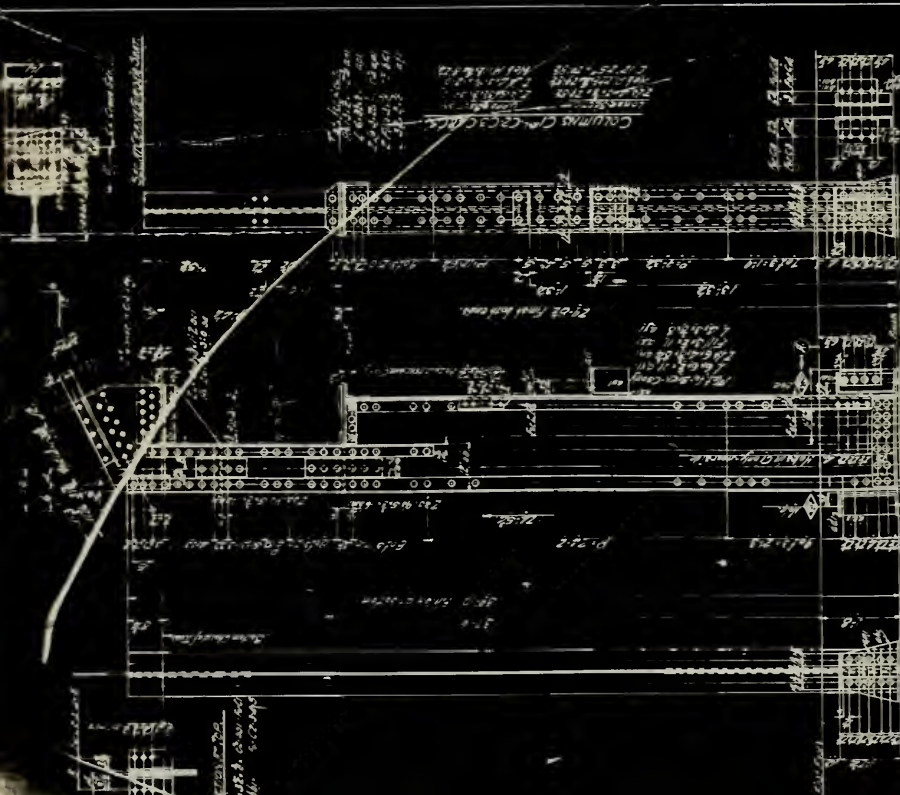
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Section 24

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(Bill of Exceptions—Deposition of W. H. Stratton.)

blue prints, which were identified by the witness, received in evidence, and marked respectively "Defendant's Exhibits 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18."

(Bill of Exceptions—Deposition of W. H. Stratton.)

Witness further testified, referring to Defendant's Exhibit 7, that the large gusset plate at the top of the column is usually shipped loose; referring to Defendant's Exhibit 8, that trusses T-5 usually are shipped knocked down with the web members and peak gusset loose; referring to Defendant's Exhibit 9, that the connecting plates and struts, S-8, and S-9, are usually shipped loose; referring to Defendant's Exhibit 10, that the large plates at the top of the columns usually are shipped loose; referring to Defendant's Exhibit 11, that the connecting plates in the center of these columns usually are shipped loose; referring to Defendant's Exhibit 12, that the connection plates at the end of the bottom chord, usually are shipped loose; referring to Defendant's Exhibit 13, that the projecting plates and connection in the center and top chords usually are shipped loose; referring to Defendant's Exhibit 14, that the plates for the connecting struts, S-6 to S-5, usually are shipped loose and not riveted to strut S-5; referring to Defendant's Exhibit 15, that the plates splicing chord sections FE-1 and FE-2 to EB-1 and EB-2 usually are shipped loose; referring to Defendant's Exhibit 16, that the struts usually are shipped knocked down, all the web members loose; referring to Defendant's Exhibit 17, that struts S-61, S-62, S-63, S-64 and S-65 usually are knocked down, all web members loose; referring to Defendant's Exhibit 18, that

(Bill of Exceptions—Deposition of W. H. Stratton.)

there are several connection plates to columns C-10 and C-11 which usually are shipped knocked down.

Witness further testified that in giving the detailed testimony concerning the drawings previously referred to, he was pointing out work which was riveted in a manner not customary for water shipment, and was pointing out that the drawing room did not follow instructions in regard to shipping this work knocked down as they usually do for water transportation.

Thereupon the defendant, to sustain the issues upon its part, called as a witness one FRANK EDWARD FEY, who was duly sworn and testified as follows:

**(Direct Examination of Frank Edward Fey
for Defendant)**

Witness testified that he resided in Portland and was with the defendant company as contracting agent; that he had been engaged in his present business contracting for the United States Steel Products Company, for seven years, estimating and contracting; that he is familiar with the manner in which shop details are prepared and made up for structural steel work of the character involved in this controversy; that he had had three years in the drafting room and making details and making these plans, and two years nothing but estimating,

(Bill of Exceptions—Testimony of Frank E. Fey.)

having been with the company twelve years, the first five years doing that work and the other seven years in contracting work.

Witness further testified, referring to Defendant's Exhibit 18, that the plates to columns C-10 and C-11, which usually are shipped knocked down, were shown riveted to the column; referring to Plaintiff's Exhibit "F", that what was termed "web members" were diagonals and were all riveted; that that section was all riveted in one piece, and so shipped; referring to Defendant's Exhibit 17, that it showed the web members riveted to the top and bottom chords; that it was so shipped, all riveted in one piece; that these detailed drawings were prepared in the Ambridge plant of the American Bridge Company, located about eighteen miles out of Pittsburg; referring to Defendant's Exhibit 16, that all the struts shown thereon were indicated to have the web members diagonally riveted in the shop, and that it was so riveted and shipped; referring to Defendant's Exhibit 15, that the sections FE-1 and FE-2 were shown spliced to the other chord sections EB-1 and EB-2, and that the spliced plates referred to are riveted to the member showing open holes for making connections in the field with the other member; referring to Defendant's Exhibit 14, that it showed bracings which went between the columns and the ship shed and the large detail of one of the large sections, showing the larger center gusset plate shipped loose

(Bill of Exceptions—Testimony of Frank E. Fey.)

and, on strut S-5, two plates for connecting the vertical member to the horizontal member were riveted to the horizontal member, and were so shipped; referring to Defendant's Exhibit 13, that the plates, referred to by William Henry Stratton as being usually shipped loose, were shown riveted to the member, and so shipped; referring to Defendant's Exhibit 12, that the gusset plate at the end is shown riveted to the member, and so shipped; referring to Defendant's Exhibit 11, that the connecting plates, referred to by William Henry Stratton shown on the detail near the center of the member, were shipped loose, according to the usual and customary manner; that they could have been riveted to the column and still shipped, but that it would not have been customary in shipping it by boat; that the plate was six (6) feet one and three-quarter ($1\frac{3}{4}$) inches long and five-eighths ($\frac{5}{8}$) of an inch thick; that if it had been shipped by rail; it would in all probability have been riveted up.

Witness further testified, referring to Defendant's Exhibit 10, that the large plates at the top of the columns were shown to be riveted in the shop and were so shipped; that the plates were three and a half ($3\frac{1}{2}$) feet by three (3) feet eleven (11) inches and seven-sixteenths ($\frac{7}{16}$) of an inch thick, and projected beyond the outside of the member about nine and a half ($9\frac{1}{2}$) inches; referring to Defendant's Exhibit 9, that struts S-8 and S-9 were shown with the plates riveted to the main member

(Bill of Exceptions—Testimony of Frank E. Fey.)

and the diagonals loose; referring to Defendant's Exhibit 8, that it showed the truss riveted in one (1) piece, in other words, that the whole truss, or twice what was shown on the drawing, was shipped riveted up; that the truss was about four (4) feet deep by about twenty-four (24) feet long; that all these detailed drawings were prepared in the drawing room, in the drafting department, of the American Bridge Company at the Ambridge plant; referring to Plaintiff's Exhibit "Q", that the web members or diagonals and the top and bottom chords were all riveted together on one part of the truss, and all riveted together on the other part of the truss, each part being shipped in one piece; that the truss, if it had not been broken in the middle, would have been approximately fifty-one (51) feet long; referring to Defendant's Exhibit 7, that the large gusset plate at the top of the column was shown riveted to the column; that these columns are generally built up of several pieces, four (4) angles and plates, or a couple of channels; that the gusset plate was shipped just as it was shown on the drawing, riveted at the top of the column; referring to Plaintiff's Exhibit "O", that the peak gusset was shown riveted at the top chord of the truss, and the shoe gusset riveted to the bottom chord of the truss; referring to Plaintiff's Exhibit "P", that the peak plate or gusset plate was shown riveted at the top chord and the shoe gusset also riveted; that

(Bill of Exceptions—Testimony of Frank E. Fey.)

these were the same peak and shoe gussets to which William Henry Stratton had testified.

Thereupon the defendant, to sustain the issues upon its part, offered in evidence the deposition of one J. H. PILLSBURY, taken according to stipulation, in the City of Prince Rupert in the Province of British Columbia, on the 29th day of September, 1916, before Lewis W. Patmore, a Commissioner authorized to administer oaths in the said Province, which deposition was taken upon written interrogatories, in answer to which witness testified as follows:

(Deposition of J. H. Pillsbury for Defendant)

Witness testified that he resided at Prince Rupert, British Columbia, and was by occupation a civil engineer; that he had been engaged in that occupation for twenty years, having graduated from the Massachusetts Institute of Technology, Civil Engineering Department, in 1896, having been a rod man and inspector of sewer construction at Brockton, Massachusetts, in summer vacations; that from July, 1896, to January, 1899, he was transit man and resident engineer for the Massachusetts Highway Commission, except from February to September, 1898, when he was with the Metropolitan Sewage Company, locating a new high level gravity main sewer to the sea; that from January to May,

(Bill of Exceptions—Deposition of J. H. Pillsbury.)

1899, he was with the Boston Elevated Railway as computer and locating under ground topography; in May, 1899, he was appointed Junior Engineer, United States Engineer at large, and served in that department until May, 1906, serving during that period as transit man on hydrographic surveys, inspecting dredging and jetty construction, and in charge of various hydrographic surveys and river and harbor works; that from May, 1903, to May, 1906, he was chief draftsman for the Boston and Jacksonville offices, in the latter of which the work included fortification and river and harbor work, with the designing of a fire control system for the fortifications at Key West and Tampa, the Jacksonville District taking in all except the panhandle of Florida; that in May, 1906, he was appointed assistant engineer of the Grand Trunk Pacific, Harbor Department, at Prince Rupert, B. C., in charge of topographic and hydrographic surveys, covering all the land holdings of the company in the vicinity and the passages surrounding the islands on which the city is located, other work being the designing and supervising the construction of the Grand Trunk Pacific wharves, warehouses and buildings, and clearing of the townsite; that as a member of the local Board of Engineers, he had direct charge of the grading of the first streets, building roads and temporary water and sewer systems, also the supervising of the laying out of the present townsite which now covers two thousand acres; that in

(Bill of Exceptions—Deposition of J. H. Pillsbury.)

May, 1910, he went into private practice in Prince Rupert, in which he had continued to date; that he laid out and supervised the second section of sewers in Prince Rupert, made examinations, reports and plans for several water supply systems in the vicinity, engaged in general municipal engineering, constructed several wharves, including the Dominion Government Quarantine Wharf, and a concrete beacon on Herbert Reef; that he designed and laid out dams and wharves at North Prince Rupert, and reported on a water supply system for the company controlling this townsite, although the outbreak of the war shut down all operations there just after the townsite was cleared; that, acting as resident engineer for W. T. Donnelly of New York, he had had complete charge of the construction of the Grand Trunk Pacific dry dock and ship repair shops at Prince Rupert, including preliminary surface borings and soundings over the site; that he was a member of the "British Concrete Institute" and of the "Canadian Society of Civil Engineers."

Witness further testified that all of the work done by the Poole-Dean Company at Prince Rupert between September 12th, 1912, and July 31, 1915, upon the buildings and other structures of the Grand Trunk Pacific Railway, was done under his supervision or that of his inspectors; that he was simply the engineer in charge, acting on behalf of W. T. Donnelly, who was the chief engineer in

(Bill of Exceptions—Deposition of J. H. Pillsbury.)

charge of the work for the Grand Trunk Pacific Railway Company and the Grand Trunk Pacific Development Company, Limited; that witness was Donnelly's representative on the ground, and appointed inspectors under him who assisted him in the supervision of the work; that during his connection with the operation, control and management of this construction work, he received instructions from Mr. Donnelly only; that he transmitted such instructions to the representatives of the defendant company, Messrs. Steele and Fey, who were there part of the time during which the work was carried on, and to Mr. Dean, who carried out the work for the plaintiff company; that so far as witness was concerned, the defendant company was in actual control of the carrying out of the work, but the defendant company did not keep a representative on the work all the time, and consequently most of witness' instructions were given direct to the plaintiff company, who, as witness had always understood, were simply sub-contractors under the defendant company, and whom witness always regarded as such. Witness further testified that, during his connection with the operation, control and management of this construction work, he exercised only such control of the work as is customarily exercised by the engineer in charge; that he never received or acted under any orders or instructions concerning such operation, control or management from the defendant company, excepting that the de-

(Bill of Exceptions—Deposition of J. H. Pillsbury.)

fendant company asked him to notify them if he had any difficulty in getting the plaintiff company to obey his instructions.

Witness further testified, in response to a question as to whether or not any understanding existed between the Grand Trunk Pacific Railway and the plaintiff company concerning the furnishing or reservation by the Grand Trunk Pacific Railway of space for storing and handling the structural steel for this construction work, that before the arrival of each vessel bringing steel, he went into the question of storage room with Mr. Dean; that several other contracts were being carried on, and that it was, therefore, necessary to specify areas where the Poole-Dean Company could sort and store their steel, and that this was done; that the "Buena Ventura" tied up at the eastern end of section "A" and was unloaded there; that he could not see that any special difficulty was experienced in moving the steel to the foundry, but that the steel for the machine shop and boiler and blacksmith shop could not be placed directly on the sites of these buildings on account of the anchor bolts not being yet set; that it was, however, placed on the platform along the edge of the machine shops, and was convenient to the work; that the power house material was hauled to a point close beside the building; that plenty of opportunity and room for sorting was given this shipment, and that no complaint was made; that before the "Kentra" arrived, it was

(Bill of Exceptions—Deposition of J. H. Pillsbury.)

decided that the steel for the ship shed would be unloaded on scows, towed around to the launching platform and stacked there; that this was the most convenient and cheapest way to get it there, and would have been had the platform been entirely clear, on account of the distance between the ship and site; that the wharf was, however, somewhat obstructed by tracks, etc., which would have interfered with hauling the heavy members of the ship shed, but which would not interfere with hauling lumber, etc., along the wharf; that filling between the two rows of piers in the ship shed was not completed for several days after the "Kentra" arrived, when the tracks were taken up and the deck planks replaced, that the launching platform was, however, entirely clear and afforded plenty of room for sorting and piling their material.

Witness further testified, in response to the same question, that on account of plaintiff company's anxiety to get the material off quickly, very little sorting was done, and that the steel was all piled over an area of about eighty (80) feet by one hundred and fifty (150) feet; that some of the material for the wings of the dock and erection dock steel was also piled there; that the large columns, girders and bases were sorted out, but not much else, and that, in his judgment, considerably more sorting could have been done; that it would have been an impossibility to berth a ship in front of the launching platform; that there was no use

(Bill of Exceptions—Deposition of J. H. Pillsbury.)

in unloading the "Kentra" on section "A", because it was much cheaper to handle the steel as it was handled; and that, as a matter of fact, in conversation with Mr. Dean several weeks before the "Kentra" came in, he and Mr. Dean came to the conclusion, and Mr. Dean then determined, to handle the ship shed steel by scows. Witness further testified, in response to the same question, that had the contractor chosen the "Arna" could have been berthed in the same location as the "Buena Ventura," and the material could have been delivered from there to the place where it was piled in front of the machine shop, which, however, in witness' judgment, would have been more expensive than the method employed of using scows, and that he had no doubt that it was for this reason Mr. Dean did use scows; that there was no reason why the material landed on the pier could not have been moved around to the platform opposite the machine shop, and the vessel then turned around and the after hatch loaded on the pier; that this would have meant delay to the vessel, however, which they were anxious to avoid and besides, in witness' judgment, the steel was more cheaply handled by scows; that plaintiff company had very little equipment for hauling material, but did have excellent derrick equipment, and that witness believed that in this case, as in the case of the "Kentra," Dean chose the more economical method of getting the steel unloaded and piled; that in general witness con-

(Bill of Exceptions—Deposition of J. H. Pillsbury.)

sidered the plaintiff company was afforded very good facilities for handling and storing material; that as a matter of fact, some of the other contractors were inconvenienced considerably through witness compelling them to keep the platforms as clear as possible in order to accommodate steel; that much of the material used in other parts of the plant had to be hauled a considerable distance back from the platform and stored, but that the plaintiff company never had to do this.

To this answer plaintiff objected on the ground that it was not responsive to the question and incompetent. Thereupon the Court overruled the objection of the plaintiff, and to this ruling of the Court the plaintiff excepted, and said exception was allowed.

Witness further testified that the space previously described in his testimony was reserved by him for plaintiff company and furnished to them; that no understanding existed between the Grand Trunk Railway Company and the plaintiff company concerning the construction or furnishing of a pontoon to the plaintiff company until just before commencing the work of erecting the steel wings of the floating dry dock; that Dean asked to be allowed to use one of the twelve pontoons of the dry dock as a derrick scow, and permission was given by witness and approved by Mr. Donnelly; that this pontoon was used by plaintiff company all through the erecting of the steel work on the dry

(Bill of Exceptions—Deposition of J. H. Pillsbury.)

dock, and that no rental was paid by them, nor were they asked to pay anything for its use; that no pontoons were constructed for the plaintiff company, but they were allowed the use of one as previously testified to; witness further testified that plaintiff company's bill for extra work on the wings of the dry dock, aggregating Four Hundred Dollars and Seventy cents (\$400.70), was approved and forwarded by witness through Mr. Donnelly to the Grand Trunk Pacific Railway Company for payment on December 14, 1915; that it was customary under this contract to pass estimates on account of labor involved in extra work for the plaintiff company and not in favor of the defendant company.

Thereupon the defendant, to sustain the issues upon its part, offered in evidence the deposition of one STETSON G. HINDES, taken according to stipulation, in the City and County of San Francisco, State of California, and in the Northern District of California, on the 29th day of September, 1916, before Eugene W. Levy, a Notary Public in and for said State, County and District, which deposition was taken upon written interrogatories, in answer to which witness testified as follows:

**(Deposition of Stetson G. Hindes for
Defendant)**

Witness testified that he resided at 2519 Broadway, San Francisco, California; that he was a civil engineer and contractor by occupation; that he graduated from the Massachusetts Institute of Technology, Mechanic Arts Course, in 1888, worked four years drafting in machine works, five years assistant engineer of Harbor Commission in San Francisco, three years engineer of the City Street Improvement Company, three years in private practice as consulting engineer, and thirteen years with the San Francisco Bridge Company, three years as Pacific Coast manager and ten years as president. Witness further testified that while he had never been connected with the manufacture of steel, he had purchased a good deal of it, erected and had to do with its erection during most of his engineering experience, especially during the past thirteen years here while in charge of the San Francisco Bridge Company; that he had erected a great number of steel bridges in all parts of California, and a number of large wharves of steel construction, among them, Fort Mason, the Portland wharves and warehouses, and at the present time the Pearl Harbor Dry Dock at Hawaii, which contained a large amount of structural steel, and the Hunter's Point Dry Dock at San Francisco; that he had had personally to do with all of this work and is familiar with steel structures and their erection; that the Fort Mason Transport Wharves used about four

(Bill of Exceptions—Deposition of G. Hindes.)

thousand (4000) tons, and about five thousand (5000) tons of structural steel have been used in the Pearl Harbor Dry Dock.

Witness further testified that the structural steel, which is fabricated at the shop for shipment by boat, is not assembled and riveted into any large units, but the shop riveting is confined to single members in such way as to keep their size and shape as small and compact as practicable and not liable to injury in handling; that structural steel fabricated for shipment by water is left knocked down so that there will be no large or unwieldy pieces, and, as a consequence, a large amount of field riveting is required when erecting such material; that each column, floor beam, etc., would ordinarily be shipped as a separate piece, and the trusses would have their main columns shipped as separate pieces, each brace would also be shipped separately and gusset plates, which were not too large would be riveted to the principal member, but if these gusset plates were particularly large or projected out from the main member too far, they also would be shipped separately, and would have to be riveted in place when the steel reached its destination.

Witness further testified that, in shipping steel by rail, it is possible to have more of the assembling and riveting done in the shop and less in the field at the time of the erection, for shipment by rail is governed entirely by weight, and the only necessity for compactness is that required by the limit of the

(Bill of Exceptions—Deposition of G. Hindes.)

fair clearance for tunnels, etc.; that steel shipped by rail is usually loaded into cars at the factory and shipped through to its destination without re-handling, and that there is little tendency for the steel to shift about or become distorted, whereas steel which is intended for water shipment is usually first shipped by rail to the seaboard, and then re-handled into ships and often again loaded onto cars at the end of the water trip; that it is subject to more or less rough handling by stevedores and liable to distortion and injury; that the size of the piece is limited by the derricks and gears used for loading the vessel and by the size of the hatch, and more particularly by the vessel's rule of charging freight by measurement if this will exceed the actual weight.

Witness further testified that he was familiar with the manner in which shop details for fabricating structural steel are prepared, and could assert that these detailed drawings govern fully the exact amount and character of all work to be done in the shop, and that no shop would be expected to deviate in the slightest degree from the exact work indicated by the shop details; that the drafting office should know, before preparing such detailed drawings, whether the material is to be shipped by rail or water, and would be guided entirely by this information; that if the material were to be shipped by rail, the drawings would be made to show large member units and more shop riveting than if for

(Bill of Exceptions—Deposition of G. Hindes.)

water shipment, where the limitation of the ship's option for charging freight by measurement instead of actual weight would be kept in mind, and also the fact that the material must be re-handled, possibly several times, before reaching its destination, and that it must be lowered through ship's hatches and stored below with no positive assurance against shifting and becoming injured.

Witness further testified that he had carefully examined the specifications, original designs, and shop details covering the power house, the ship shed, the machine shop, boiler and blacksmith shop, foundry and coal storage buildings, prepared by the American Bridge Company for the defendant company for use in constructing and erecting the buildings of the Grand Trunk Pacific Railway at Prince Rupert, British Columbia, and understood them clearly; that he considered that these shop details show the customary and usual amount of fabrication for water shipment, and that, if he were figuring upon the erection of the steel which was to be transported by water, he would figure upon doing fully the amount of field assembling and riveting that these shop details show would be required. Witness further testified, referring to Plaintiff's Exhibit "B", that the roof truss is indicated to be assembled in the field, but that the top and bottom chords are riveted up complete with their gusset plates in place, except the end gusset plates, which

(Bill of Exceptions—Deposition of G. Hindes.)

are so large to take up extra room in shipping and would be very apt to become bent.

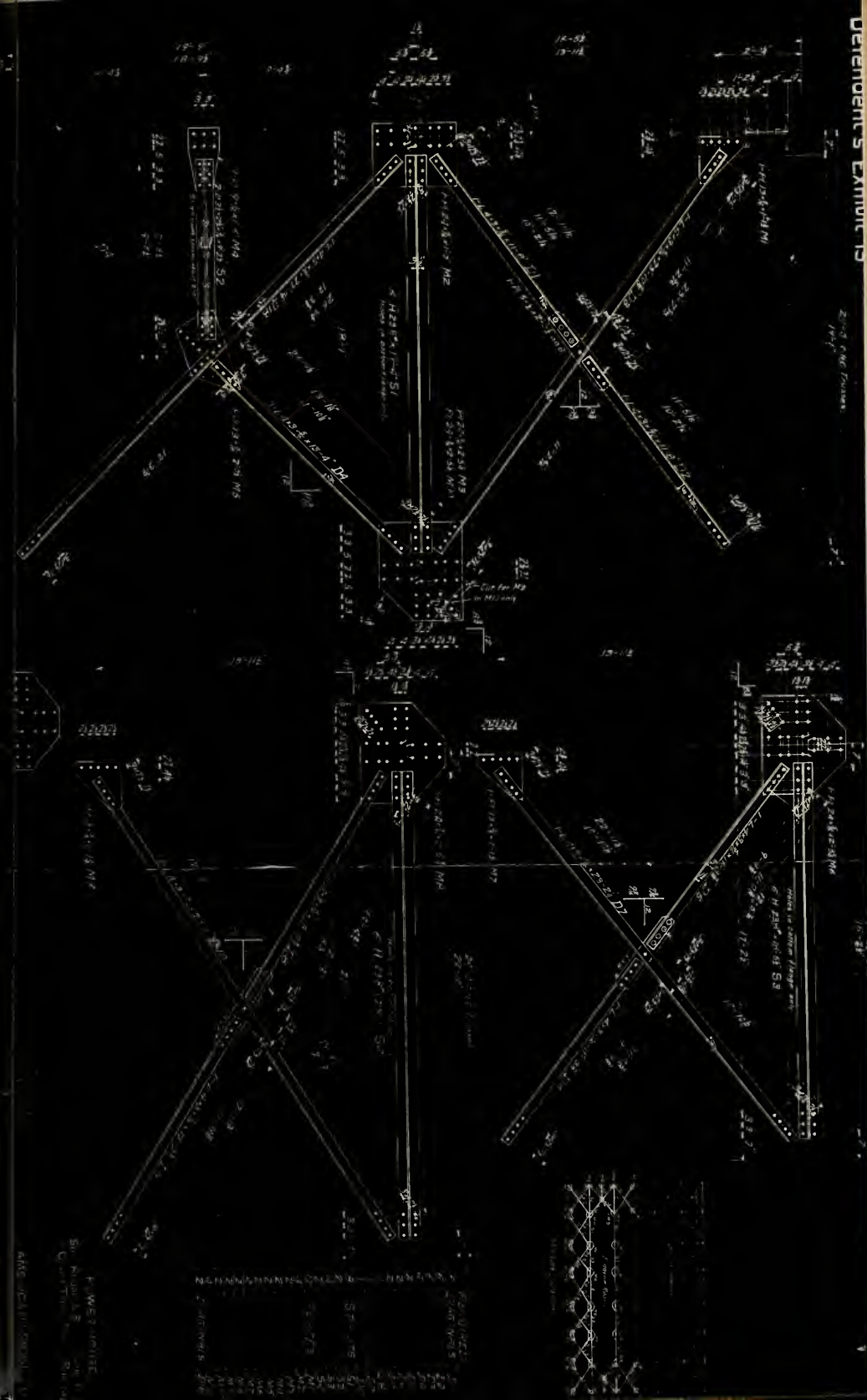
Thereupon defendant offered in evidence a blue print, which was received in evidence and marked "Defendant's Exhibit 19."

Witness further testified, referring to Defendant's Exhibit 19, that it would be impossible to ship the cross bracing shown on this set in any other way than as indicated, which calls for the single members being shipped separately.

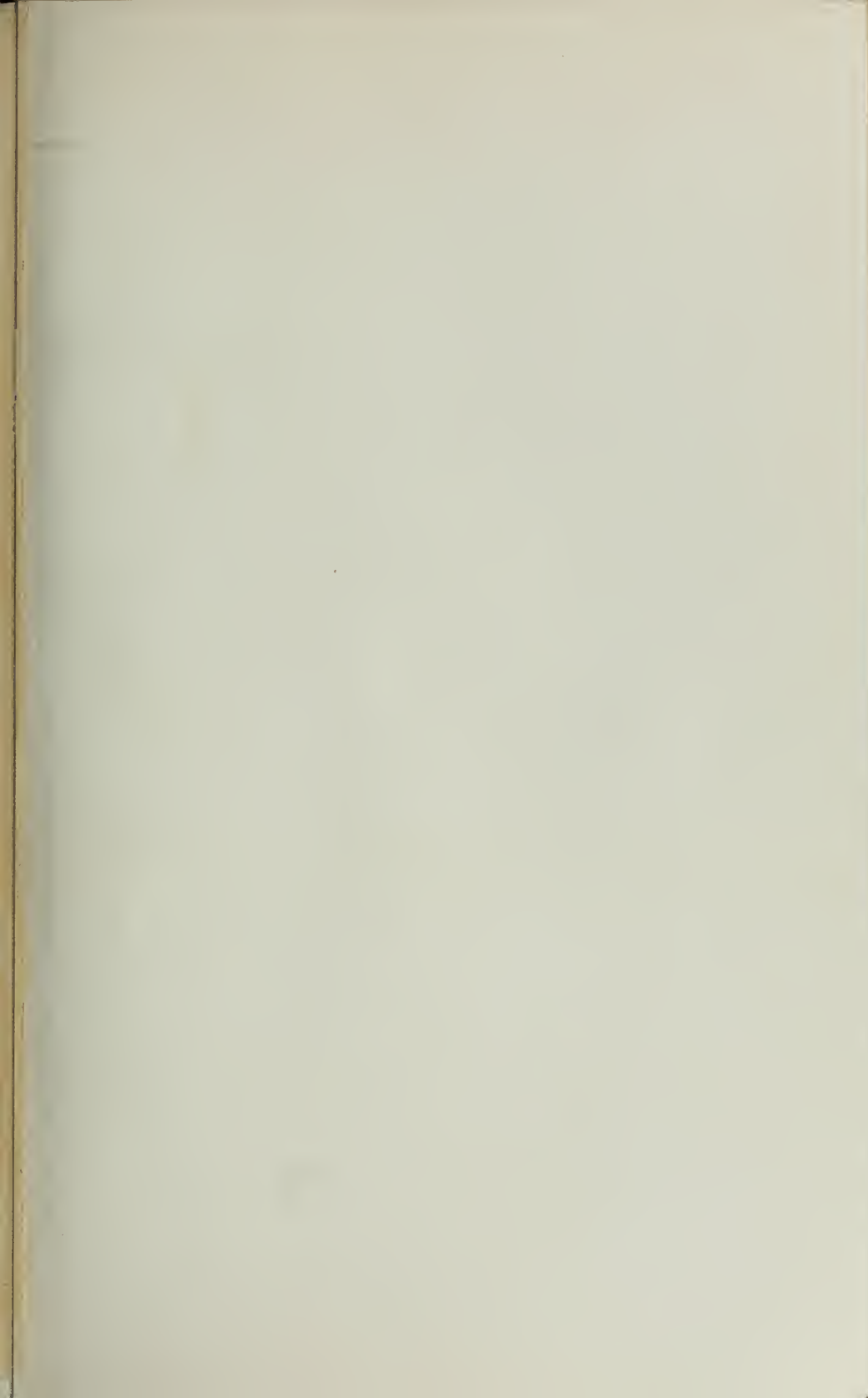
Witness further testified that the blue prints, known as Plaintiff's Exhibit "B" and Defendant's Exhibit 19, were simply picked by the witness at random out of the shop details examined by him, and that they illustrate the practice shown throughout the exhibits.

Witness thereupon testified that he was familiar with the general rules and requirements regarding the shipment of structural steel by water in ships between November 29th, 1912, and December 17, 1913, and understood that no extremely long pieces would be accepted by the steamship companies, except by special agreement, and that no units of such size or shape as to be easily injured in handling would be accepted; that the vessels reserved the right to charge by measurement on the basis of forty (40) cubic feet, equal to one (1) ton, at any time that the cost of freight arrived at in this way would be greater than the cost by actual weight.

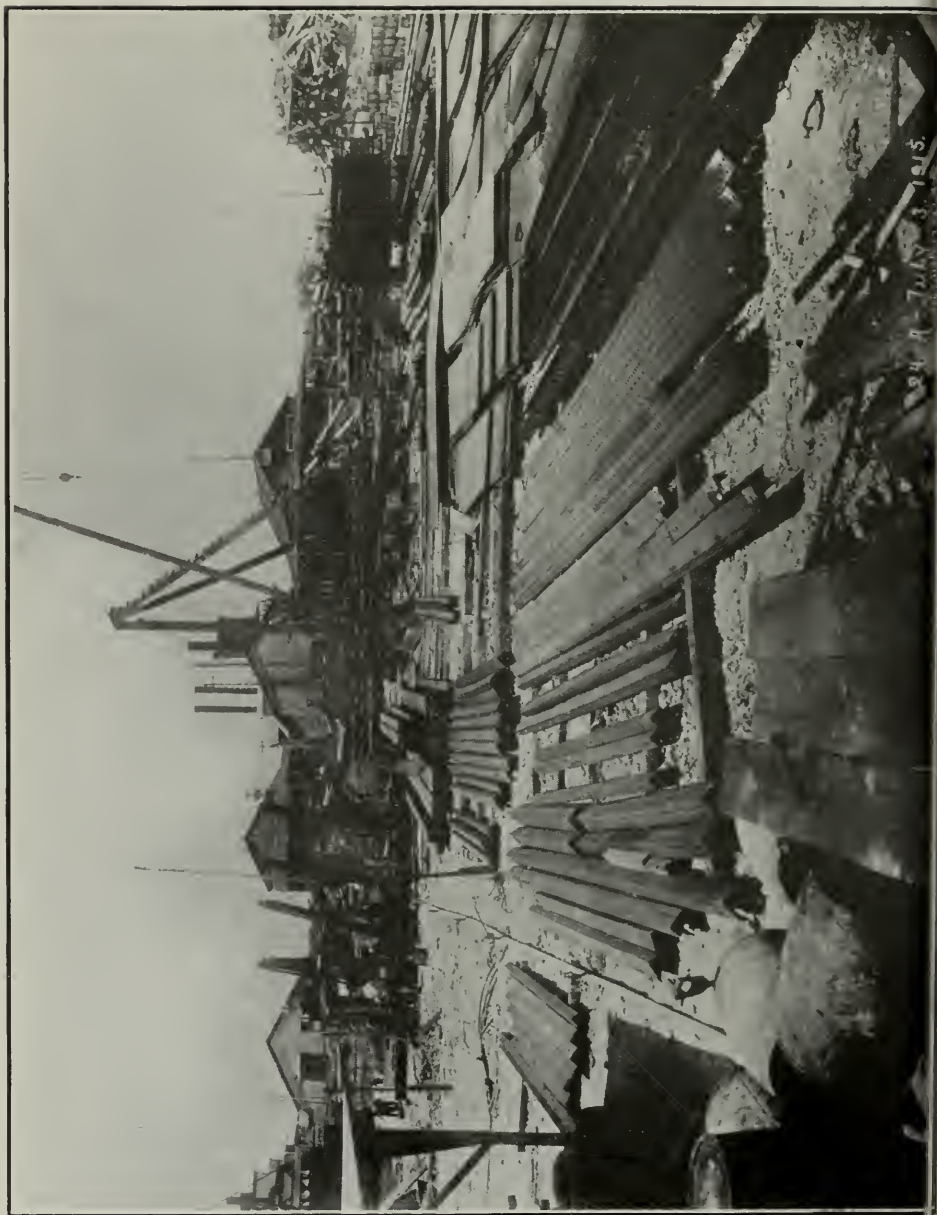
Witness further testified that he had never been

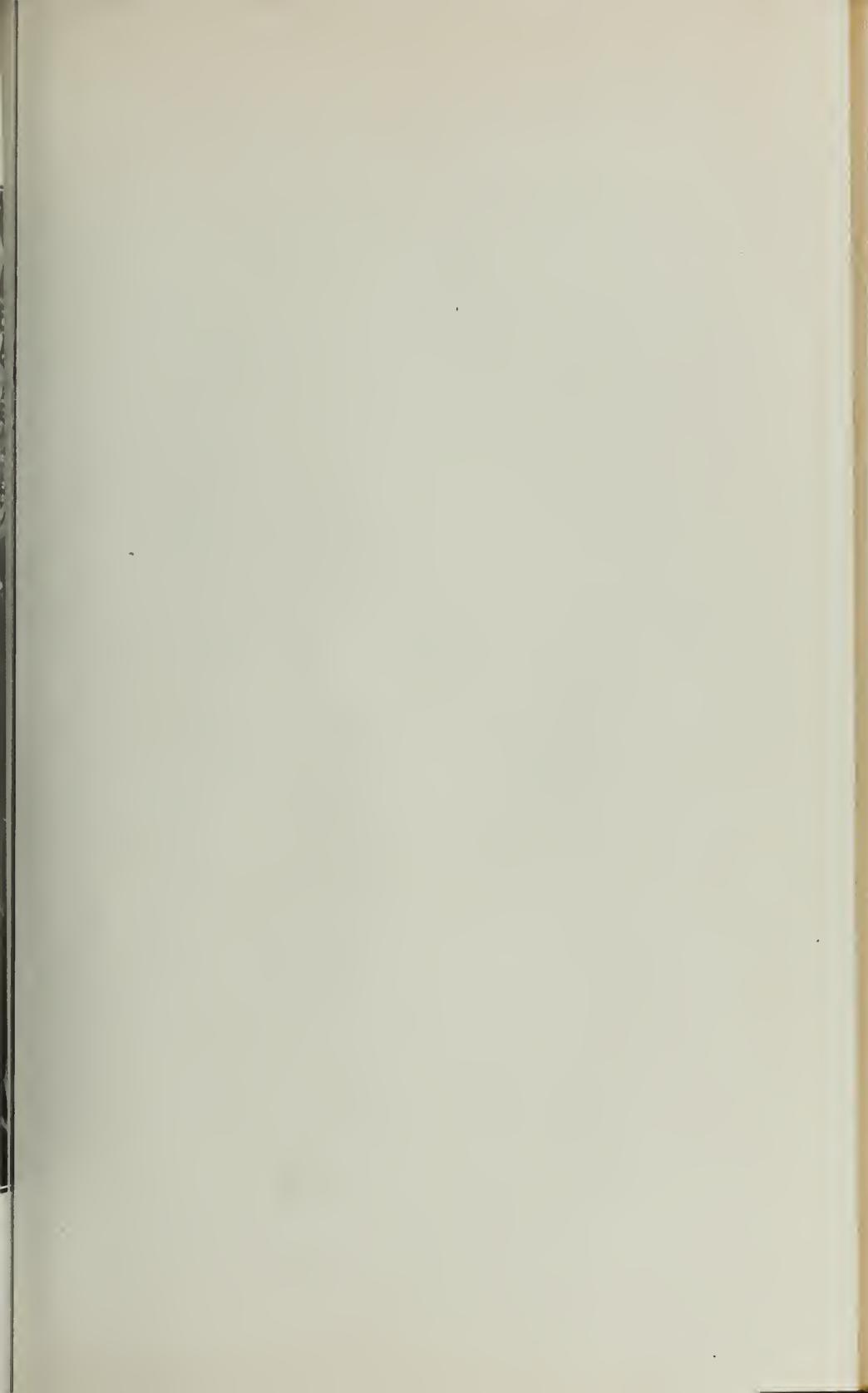




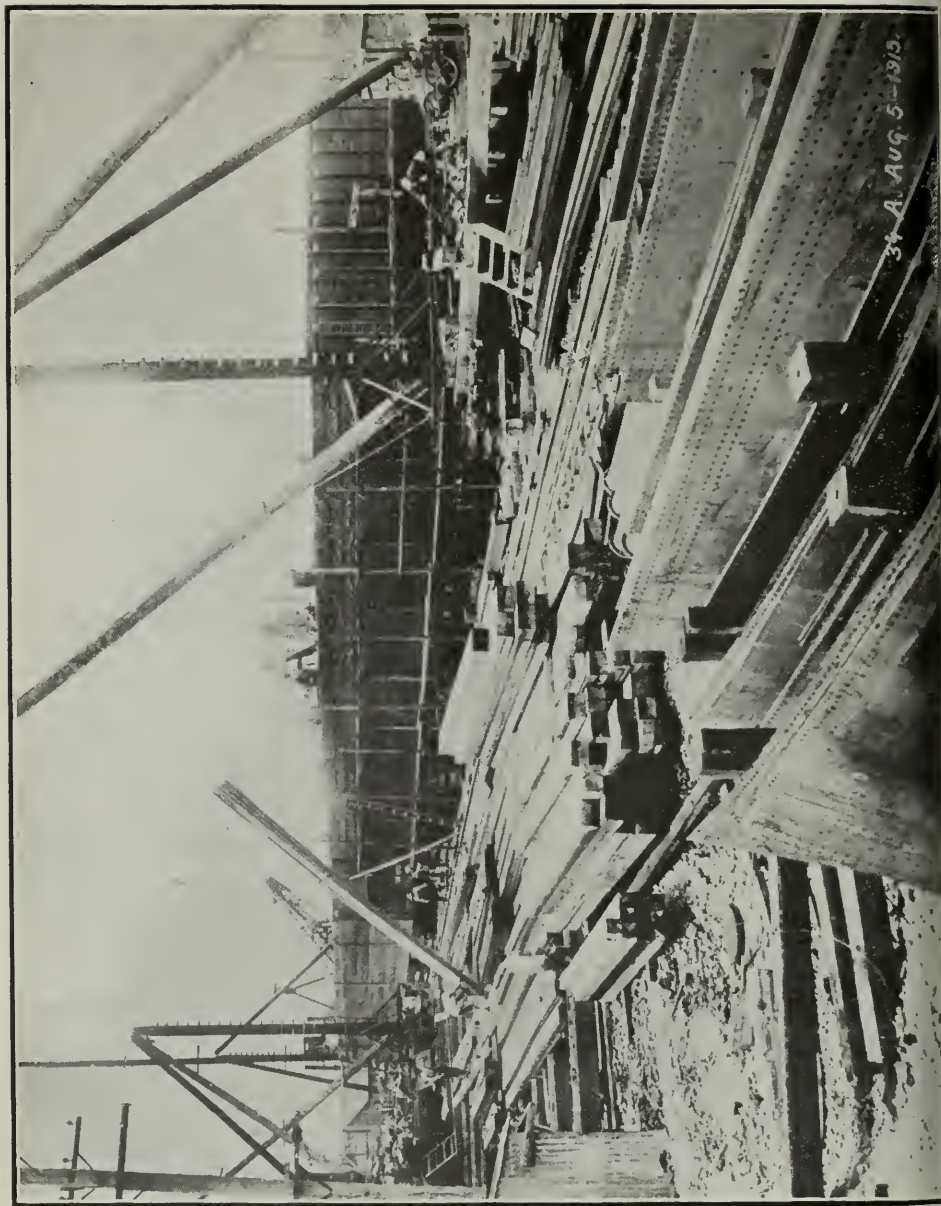


DEFENDANTS EXHIBIT C.

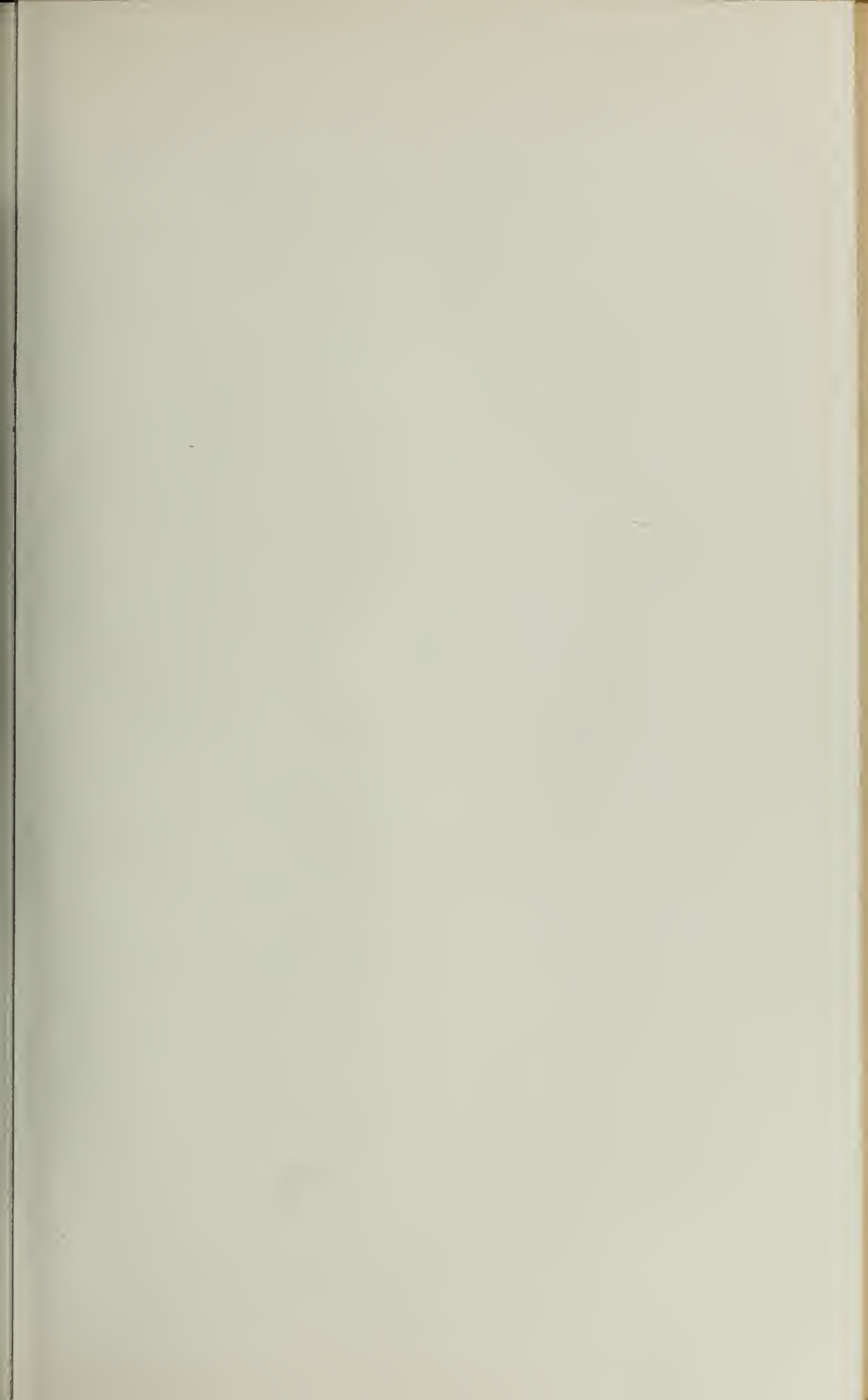




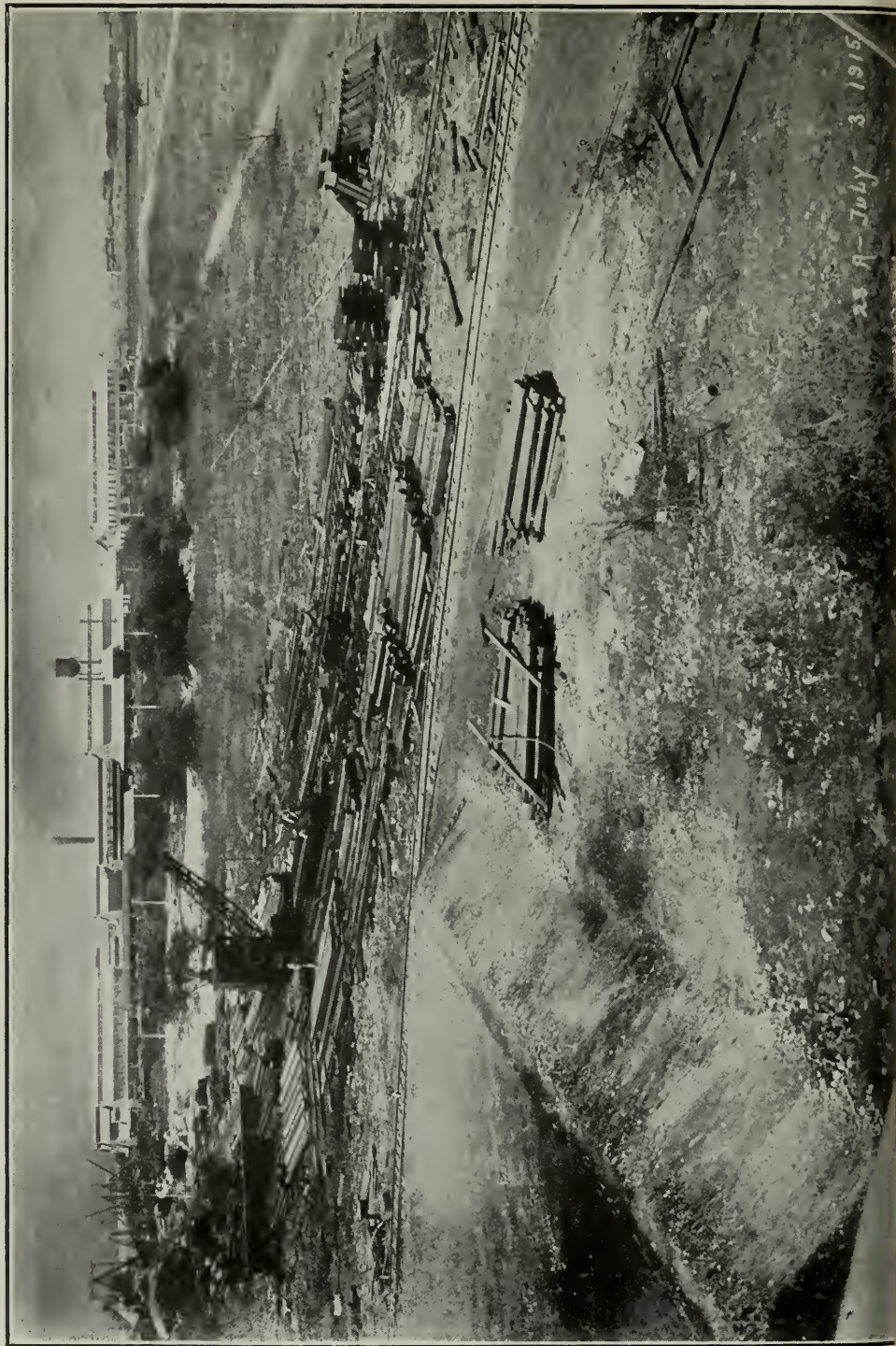
DEFENDANT'S EXHIBIT B.



34-A. Aug 5-1912.



DEFENDANT'S EXHIBIT A.



(Bill of Exceptions—Deposition of G. Hindes.)

connected in any way with the construction work carried on by plaintiff company in Prince Rupert, and had no official or other connection with the plaintiff company or defendant company.

Thereupon defendant offered in evidence three photographs showing portions of the structural steel for the Pearl Harbor dry dock as it was received from the vessels, illustrating the testimony of Stetson G. Hindes in regard to there being a large amount of field riveting required in erecting water shipments.

To the introduction of these photographs, plaintiff objected for the reason that the steel shown thereon was for the erection of a pontoon dry dock in the Pearl Harbor dry dock in the Hawaiian Islands, and the claim in the particular case here was of steel for building of a dry dock at Prince Rupert.

Thereupon the Court overruled the objection, and the photographs were received in evidence, and marked "Defendant's Exhibits A, B and C."

(Bill of Exceptions—Deposition of G. Hindes.)

Thereupon the defendant offered in evidence the original specifications covering the work at Prince Rupert, and to the introduction of these specifications plaintiff objected on the ground that there was no testimony showing that the plaintiff company was familiar with these specifications or read them, and that there was no testimony to show that the bid of the plaintiff company was based entirely upon the specifications.

Thereupon the Court overruled plaintiff's objection, and the specifications were received in evidence and marked "Defendant's Exhibit 20."

(Defendant's Exhibit 20)

July 9th, 1912.

SPECIFICATION

No. 3

**FOR STEEL WINGS FOR A 20,000 TON FLOATING DRY
DOCK FOR THE GRAND TRUNK PACIFIC RAILWAY,
PRINCE RUPERT, B. C.**

Frank E. Kirby,
William T. Donnelly,
Engineers.

17 Battery Place,
New York City, N. Y.

This specification is to be considered in connection with the accompanying plans, Drawings No. W-1, W-2, W-3, W-4, W-6, W-7, W-8 and W-9 and

Bill of Exceptions—Defendant's Exhibit 20.)

Drawing No. P-10, M-6 and No. 9, forming part of same, and is intended to furnish such information as will enable those experienced in similar watertight steel work, to arrive at a clear understanding of the quantity, quality and kind of material to be used and the character and cost of the labor to be employed.

GENERAL DESCRIPTION.

The work consists of furnishing and erecting the steel wings for a pontoon floating dry dock of three sections, the wings to be 38' high, 15' wide at the bottom and 10' wide at the top, with the covering of the top extended 2', making an overall width at the top of 12'. The wings of the two end sections are each to be 133'-5" long and of the six pontoon section, 268'-5".

The framing will consist of 8" channels braced with angles, as shown on the plan, and these will be on 3' centers with a 3'-9 $\frac{1}{2}$ " space at each end of the wing. There will be two bulkheads of detailed construction as shown on the plan, in the short sections, and five bulkheads in the long section.

There will be twelve (12) standard manholes on the inside of each wing and six (6) doors for entrance on the deck of each wing, located as indicated on the plan.

WING ATTACHMENTS.

The attachment of the wings to pontoons will be by means of a link and wedges, a steel casting

(Bill of Exceptions—Defendant's Exhibit 20.)

attached to pontoon at each frame and a structural steel fitting attached to wing. There will be 360 sets of these fastenings for each wing, of detailed construction, as shown on detailed plan Sheet No. W-2.

It will be understood that this contractor is to furnish these attachments complete, including steel castings secured to pontoons, and that he is to provide bolts, fit and secure in place the steel castings on the outside of pontoon and that he is to put in place the steel castings on pontoons at the inner side of wing, but that the rods for these castings will be furnished and put in place by the contractor building the pontoons.

This contractor is to furnish the pontoon builder with a template of the holes in these steel castings. This contractor will also furnish and fit links and steel pins with the necessary shims for covering any irregularity in length of links or position of fixtures.

PACKING UNDER WINGS.

During erection and fitting up, the contractor is to supply a packing of #10 steel plate, 14" wide, between wings and pontoons and upon completion of erection, the contractor is to replace this packing with 3-ply Canvas Belting thoroughly saturated with red lead putty, composed of red lead and linseed oil.

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WINGS.

The wings are to be covered with plating varying in thickness from $\frac{1}{2}$ to $\frac{5}{16}$ ", distributed as shown on the plan. On the outside of each side and each end of the wing and also on bulkheads, there will be stiffening angles of dimensions as shown on the plans.

OPENINGS AND REINFORCING.

Openings are to be cut through deck and bottom plating for machinery, as indicated on the plans, and are to be reinforced to make section of equal strength to uniform section of wing.

CONNECTIONS OF SECTIONS.

By referring to Sheet No. W-3, there will be seen the manner of connecting the different sections together. It will there be seen that across the abutting ends of the wings there is to be a triangular jaw and socket piece very strongly framed to the end of the wing, constructed of $\frac{3}{4}$ " plating. The interior of the attachment is to be filled solid with cement and on the inside and outside of the wings at this point there is to be a link attached, the link to be $4'-8\frac{1}{2}"$ between center of pins. The attachment of link at each end is to be by $8 \times 8 \times \frac{3}{4}$ angle iron reinforced by plate as shown.

It will be understood that these attachments are to be put on the abutting ends of the wings of the sections where they come together when the

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dock is assembled in one piece. They are designed to have a play or lost motion of 1 inch.

MOORING ATTACHMENTS.

By referring to Sheet W-6, there will be seen the manner of mooring the dry dock to the pier work. By reference to the diagrammatic sketch it will be seen that there are to be two of these attachments on each of the small sections and four on the large section. They are to be in the nature of a large jaw with removable piece for detaching when it is necessary to move the sections or the dock as a whole.

To distribute the strain, the interior frames of the wings are to be reinforced by 10" channels, as shown, and attachment is to be made from the outside to stiffening angles and additional angles where necessary.

All rivet heads, where they will come in contact with and slide on the shore member of mooring, are to be countersunk and chipped smooth.

This contractor is to supply and put in place rocking jaw of wood on steel work but owner will supply shore member of mooring.

GENERAL REQUIREMENTS.

The general requirements of the work to be performed are that it shall be of good marine, water-tight construction; that the framing and plating, together with the stiffening on the outside, shall be able to stand an external or internal pressure

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corresponding to a difference of 20 feet in water level. These requirements to apply equally to the interior bulkhead.

The riveting is to be on 3" and 6" centers, designed for multiple punching. All 6x6 corner angles to be double riveted; also, first streak top and bottom. All longitudinal plates to be butt joint with splice plate on the inside, double riveted. All caulking edges to be sheared and will be required to equal good outside ship work.

SUPERVISION OF CONSTRUCTION.

The design, construction and equipment of the floating dry dock is to be under the direct supervision of Frank E. Kirby or William T. Donnelly or their authorized representative. The term "Supervising Engineer" when used in this specification shall be understood to mean Frank E. Kirby or William T. Donnelly or their authorized representative.

During construction of the dock, the Contractor must provide for the ready access thereto at all times of the Supervising Engineer and facilitate the inspection of material and workmanship. It is to be clearly and distinctly understood that any material or workmanship which, in the opinion of the Supervising Engineer, is unsound, defective or otherwise unsatisfactory, such material and workmanship shall be removed and renewed by the Con-

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tractor to the entire satisfaction of the Supervising Engineer.

Failure or neglect on the part of the Supervising Engineer to condemn or reject bad or inferior work or material while the work is in progress, shall not be construed to imply an ultimate acceptance of such work or materials. No claim for delay will be allowed to the Contractor on account of loss of time due to the renewal of material or workmanship, which has failed to comply with the requirements of these specifications.

MATERIAL AND TESTS.

All materials used in the construction of the dock shall be of the best quality. To consist of open hearth plates and shapes throughout unless otherwise specified. Steel plates and shapes used in the construction of the dock must conform to the requirements in the tests prescribed in this specification and in all respects to be free from defects of any character whatsoever.

The inspection of material by any authorized official or society and the acceptance of materials by the Contractor and the subsequent working of such material into the structure shall not release the Contractor from responsibility and any material which, in the opinion of the Supervising Engineer is defective, must, upon receipt of notice in writing from the Supervising Engineer, be removed by the Contractor and replaced by material con-

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forming with the prescribed tests and requirements of this specification and to the satisfaction of the Supervising Engineer. Such expense as may be incurred, due to the purchase, removal and renewal of defective material or workmanship, is to be borne by the Contractor.

WEIGHTS AND MEASUREMENTS OF PLATES AND SHAPES.

Weights and measurements of plates and shapes to be in accordance with standard specification adopted by the Association of American Steel Manufacturers.

TESTS.

The physical requirements for steel used in the construction shall be a maximum tensile strength of 55,000 to 65,000 pounds per square inch and elastic limit equal to one-half the tensile strength—elongation to be not less than 23% in eight inches. Cold bending test to be 180 degrees flat—without rupture on the outside of bent portions. Rivet steel shall have a maximum tensile strength of 47,000 to 55,000 pounds per square inch and elastic limit equal to one-half the tensile strength. Elongation to be not less than 25% in eight inches.

CHEMICAL TESTS.

Phosphorus and sulphur limits for steel:

Acid open hearth steel shall not contain more than eight one-hundredths of one per cent of phosphorus and basic open hearth not more than five

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one-hundredths of one per cent. No steel shall contain more than five one-hundredths of one per cent of sulphur.

MILL TEST.

Copies of all mill tests and inspections are to be furnished the engineer in charge, without expense.

SHOP INSPECTION.

Access shall be given at all times to the engineer in charge of the work, or his authorized representative, to the shops where work is being laid out or assembled.

CAST IRON.

Iron castings shall be of the best quality of tough gray foundry iron and shall have a maximum tensile strength of not less than 18,000 pounds per square inch, free from blow holes and true to patterns and of good finish.

CAST STEEL.

Steel castings, after annealing, shall have a maximum tensile strength of not less than 60,000 pounds per square inch, with an elongation of not less than 15% in two inches. Cold bending test to be 90 degrees around three times their thickness and when red hot or over, 180 degrees flat, without rupture on outside of bent portions.

All steel shall be stamped with its cast number.

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RIVETING.

When practicable, holes are to be punched by multiple punch and the punching must be accurately performed in order to avoid the necessity of reaming unfair holes. Drifting holes must not be resorted to. When holes are to be countersunk, the countersinking must conform to United States Navy or Lloyd's Standard.

Exposed rivet points to be "snap" or "button." Any doubtful or unsound rivets are to be removed at once and no riveted joints are to be coated (paint or cement) until receiving the permission of the Supervising Engineer after satisfactory tests.

Generally solid liners to be used.

The bolting up or assembling of the structure to be performed in the most thorough manner and any irregularity of plated surface, due to riveting, will not be accepted. Before riveting any parts together, the faying surface must be thoroughly free from mill scale, grit, coal-ask, etc.

Contact surfaces and other surfaces not accessible after erection, to be coated with red lead and linseed oil.

COUNTERSINKING AND FLUSH RIVETING.

Countersinking and flush riveting shall be used wherever shown on the plans or called for in the specification; also, wherever required to avoid contact of rivet heads with attachments. Such rivets on outside of floor of wings as are in the wake of

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the wood packing pieces upon which the wings rest, are to be countersunk and chipped flush to give fair bearings on packing pieces.

BALLAST IN WINGS.

From a review of the material used in construction of the pontoons and the weight of the wings and mechanical equipment, it has been determined that there will be required approximately 550 tons of ballast to cause the dock to sink when it is entirely flooded with water. In providing this ballast, it has been seen fit to make a certain portion of it in the form of large timbers to be placed in the upper part of the wings, (See detailed sheet No.) in such a way that while it will act as ballast, causing the dock to sink to the greatest depth required, it will, when the dock has reached that point,, represent a form of reserved buoyancy of 500 tons of such a character as can be positively depended upon, thus preventing the entire submergence of the dry dock under any conditions.

The additional weight that will be required is to be supplied by this Contractor in the shape of stone ballast of clean, hard rock of such size as to be readily handled and to be placed either on the deck or in the interior of the pontoons as may be required by the engineer. The amount of stone ballast is not to exceed 500 tons for the entire dock.

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LADDERS AND INTERIOR GRATING.

Referring to Sheet No. W-7, there will be seen the detailed construction of ladders and interior grating along the interior of each wing. The opening through the deck for this entrance is to be 6'x2' wide, to be reinforced by a solid plate surrounding the opening and to have a substantial ladder of the construction shown, descending to the grating, which is to extend the full length of the wing, with openings at each bulkhead surrounded by substantial railing with access to vertical ladder on each side of bulkhead extending to the bottom of the wings.

MACHINERY HOUSE.

At the center of each wing there will be required a machinery house 21' long x 10' wide x 10' high; to be of substantial steel frame construction and to be covered with heavy galvanized iron. To have suitable doors and windows and reinforced frame over motor of sufficient strength to handle parts of a 200 H. P. Motor.

INTERIOR LADDERS AND DRAUGHT SIGNS.

On the inner side of each wing at each end of each pontoon there is to be a substantial ladder as indicated on Sheet No. W-7, for access from deck of pontoon to top of wing and adjacent to these ladders and at a point midway of the length of the longer section, there are to be draught boards painted white and plainly marked with

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figures in black to indicate the depth of water over the keel blocks. These draught boards are to be of detailed construction as shown on the plan and to be substantially secured to the side of the wings.

FENDERS.

At each end of each section of the dock there are to be substantial timber fenders of dimensions as shown on Sheet No. W-7, amply secured to the corners of the sections as guards for the entrance of ships.

DOWEL PLATES.

Referring to Sheet No. W-4 there will be seen the detailed construction of Dowel Plates and their application for accurately locating the pontoons in connection with the wings. A heavy bent plate $\frac{3}{4}$ " thick x 9" long is to be securely riveted to the bottom of the wing. This plate is to have a cut out in the horizontal portion and a superimposed 1" plate with hole for Dowel Pin, and is to be secured in place by four $\frac{3}{4}$ " tap bolts after the Dowel plate and pin have been let in and secured by through bolts to pontoon. These parts are to be put in place after the placing of the canvas packing under the wings when the pontoon and wing are secured together and in proper relative position. There will be four of these plates for each pontoon.

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PAINTING.

(A)

Shop Coat.

All material is to receive a thorough shop coat of Briggs' Tenax Bituminous Solution, this coating to be renewed wherever knocked off or destroyed during erection.

Field Painting.

After erection, the entire interior and exterior, including all bracing and framing and the outside of the bottom of the wings, are to be thoroughly cleaned and treated with two coats of Briggs' Tenax Bituminous Solution, applied by skilled workmen according to the specific directions of the manufacturers.

After the metal is thoroughly dry and under proper weather conditions, the interior below the grating near the top of the wings, including all bracing, stiffeners, etc., and also the underside of the bottom of the wings, with the exception of the marginal strip resting on the pontoons, is to be coated with Briggs' Ferroid Enamel, to be applied hot, not less than $\frac{1}{8}$ " thick.

This work is to be done by skilled workmen, the painting to be done according to the specific directions of the manufacturers and under the approval and control of the engineers and to their entire satisfaction.

The material is to be received on the ground from the manufacturers in unbroken, original pack-

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ages and no thinning or diluting of material will be allowed without the express permission and instruction of the engineers in charge.

(B) (Alternative Proposal)

Shop Coat.

All metal is to receive a thorough shop coat of Toch Bros.' TOCHOLITH and this coating is to be renewed wherever knocked off or destroyed during erection.

Field Painting.

After erection, the entire interior and the outside of the bottom of the wings are to be thoroughly cleaned and receive two coats of Toch Bros.' Bridge Cement, applied by skilled workmen according to the specific directions of the manufacturers.

After erection, the exterior is to be thoroughly cleaned and is then to receive two coats of Toch Bros.' R. I. W-49 of different shades, to be applied by skilled workmen under proper weather conditions and according to the specific directions of the manufacturers.

The material is to be received on the ground from the manufacturers in unbroken, original packages and no thinning or diluting of material will be allowed without the express permission and instructions of the engineers in charge.

ERECTION OF WINGS.

By referring to Drawing No. 1 there will be seen indicated by dotted lines, the berth for erection of

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wings alongside of Pier No. 1. It will be understood that this location is to be held available for mooring pontoons and erecting wings without charge to the Contractor, it being, however, understood that the Contractor is to make all provisions for mooring pontoons and handling his own material. Compressed air for riveting purposes will be available to the amount of 900 cu. ft. per minute and parties submitting bid are requested to state allowance which they will make upon their bid in case this amount of air is furnished by the owners.

By referring to Sheet No. P10 there will be seen the manner of securing the pontoons together, which method has been used for a previous erection. It will be seen to consist of a number of beams or stringers bridging the space between the pontoons, one set above and one set below, and drawn together with a heavy tie rod, blocking of varying thickness being placed under the timbers to give an even bearing when sprung upon the pontoons. It is to be noticed that a small block is to be used between the pontoons to regulate the spacing. The Contractor may adopt this or other approved method, which must be submitted to the engineers and whatever method is adopted for erection it must maintain the pontoons in sufficient alignment to allow for building the wings straight and correctly located.

It will be understood that the wooden pontoons

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upon which the wings are to be erected will be delivered to the steel contractor alongside the pier on the company's property, as shown on Drawing No. 1, previously referred to, and that the time of erection of the material under this contract is to commence when the first three pontoons have been delivered. After the erection of the wings on the first three pontoons has been completed, an additional three pontoons of the second or central section of the dock will be delivered to this contractor and immediately upon the delivery of the second set of pontoons, the erection of the wings of the middle section of the dock, comprising six pontoons, is to be commenced. The third set of three pontoons will be delivered as soon as completed to this contractor, and the erection of the wings of the last section of the dock, composed of three pontoons, will commence upon the turning over of these pontoons by the pontoon contractor.

It is further understood that each section of the dock, after the completion of the erection of the wings, will be secured in its permanent location by this contractor.

The contractor bidding on this work is to state the time he will require for completing the erection of the wings for the first, second and third sections of the dock after the pontoons have been delivered to him. This contractor is to be responsible for the mooring and care of the pontoons and wings until the erection is completed and the sections se-

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cured in their permanent moorings, when the responsibility for the care of the dock will be taken over by the owners, it being understood, however, that acceptance and final payment will not be made until the dock has been completely equipped and tested for requirements under this specification; that is, that the structure is to remain watertight and withstand a difference of inside and outside water-level of 20 ft.

PLANS AND SPECIFICATIONS.

This specification and the accompanying plans form part of the contract and are intended to represent the conditions and requirements for the completed work and are not to be interpreted to mean that any omissions or variations in plans and specifications shall afford the contractor opportunity to evade such conditions and requirements as are intended to be covered.

The plans and specifications shall not release the contractor from the responsibility of performing every detail of the work in a manner thoroughly satisfactory to the Supervising Engineers. Such plans and stress diagrams as form part of the contract and these specifications are to be taken as a guide by the contractor in preparing strength calculations for the details.

Prior to ordering materials from the manufacturers for use in construction of the wings, the contractor must check for the Supervising Engineers, the calculations made by the engineers to

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determine the size of scantlings indicated on the plans accompanying this specification. These check calculations to form a base of comparison with present diagrams and a check on maximum stress on the wing structure due to a difference of water pressure equal to 20 ft. head. In the event of such check calculations indicating excessive stress local or structural, modifications shall be made as required by the Supervising Engineers in order that the stress for working loads shall not at any point exceed six tons per square inch. Such results shall not, however, be used for the reduction of any net section as called for.

The contractor may submit to the Supervising Engineers for consideration, plans suggesting changes in dimensions of plates and shapes which may expedite the construction of the dock. Any variation in scantlings must reduce the stress. Plans are to be accompanied by statement in writing in explanation of the advantages to be obtained by the adoption of proposed modifications. No increase in stress above mentioned is permissible.

Before proceeding with any part of the work, details of the same are to be submitted to the Supervising Engineers for approval. All details submitted must show clearly the location and size of rivets in the structure and all fittings connected to hull properly.

Such copies of working plans as the Supervising

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Engineers may require are to be furnished by the contractor.

Specifications, tracings, prints, diagrams, etc., used in connection with the construction of the work or in connection with the design or equipment, whether prepared by the contractor or manufacturer, all such plans, test sheets, diagrams, etc., will be the property of Frank E. Kirby and William T. Donnelly, Engineers, 17 Battery Place, New York, N. Y.

The contractor further agrees that under no consideration will the plans, templates, moulds or prints, etc., above mentioned, be used for the construction of any other dock than that authorized by Frank E. Kirby and William T. Donnelly and each print shall have distinctly marked thereon, "The property of Frank E. Kirby and William T. Donnelly, Engineers, 17 Battery Place, New York."

All details and special fittings involving patterns and dies, are to have one complete set (spare) prepared, available for immediate use and stored by contractor and considered part of this contract.

BIDS.

All bids for this work should be submitted to the General Purchasing Agent, GRAND TRUNK PACIFIC RAILWAY, MONTREAL, CANADA, and made out in duplicate.

Parties desiring to furnish and erect this material will state:

1st—A price per ton for furnishing and erect-

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ing all the material on the Company's property at Prince Rupert, B. C.; the contractor to furnish all facilities for handling and erecting the material and a compressed air supply for riveting of not less than 900 cu. ft. of free air per minute at 90 lbs. pressure per sq. in.

2nd—A lump sum price to be allowed in case the Company furnishes the contractor with 900 cu. ft. of free air per minute at 90 lbs. pressure per sq. in. for riveting.

3rd—A separate price for painting all metal according to the specifications (A) and (B) under heading of PAINTING on pages 10 and 11 of this specification.

4th—The time required for the fabrication and complete delivery of all material in Prince Rupert, B. C.

5th—

(A) The time required to erect the wings on the first section of three pontoons.

(B) The time required to erect the wings on the second section of six pontoons.

(C) The time required to erect the wings on the third section of three pontoons.

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July 6th, 1912.

SPECIFICATION

No. 21

FOR STRUCTURAL STEEL AND IRON WORK FOR

SHIPBUILDING SHED

GRAND TRUNK PACIFIC RAILWAY,

PRINCE RUPERT, B. C.

Frank E. Kirby,

William T. Donnelly,

Engineers,

17 Battery Place,

New York, N. Y.

This specification, together with the accompanying drawings No. 8, No. B-23, B-24, B-25, and B-26, B-32 is intended to convey to those familiar with this class of structure, such information as will enable them to arrive at a clear understanding of the kind and quantity of material and labor necessary to complete the work as herein called for, in the best and most thorough manner.

GENERAL.

The work to be provided by the contractor is to include the supplying and erecting of the structural steel and iron work for the shipbuilding shed as herein enumerated.

(a) Main columns, trusses and eyebars (10 in all).

(b) Crane runway, extension columns and ties (4 in all).

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(c) Roof girders, purlins and longitudinal members.

(d) Crane girders and rails.

(e) Cross bracing and sway bracing.

(f) Anchor bolts, anchor plates and beams.

BASIS OF ESTIMATE.

The contractor is to state his price per ton for supplying and completely erecting the entire structural steel and iron work, as shown on the plans and outlined herein. He is also to state his estimated total weight of the material to be furnished.

DRAWINGS.

Detail and shop drawings of the entire work are to be prepared by the contractor agreeable to the plans submitted and in accordance with the directions of the engineers. These drawings are to be submitted to the engineers and are to receive his approval before the work is started and when approved, three (3) complete sets are to be furnished to the engineers for their use.

GENERAL REQUIREMENTS.

Cast iron shall be tough gray iron, free from injurious cold shots or blow holes, true to pattern and of workmanlike finish.

Structural steel shall be of uniform character for each of the specified kinds. It shall be made of the order section, shall be free from surface defects

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and shall not vary from the standard weight by more than $2\frac{1}{2}\%$.

Structural steel shall be of two kinds, medium and rivet steel and all shall be made in accordance with the standard specifications of the American Association of Steel Manufacturers.

All of the work shall be manufactured so as to fit with the best degree of precision.

Bearing surfaces of all base castings, sole plates and ends of columns are to be accurately machine-faced. All plates and angles shall be straight when laid out, and all built members, when finished shall be free from twists, kinks or open joints between component members, and any material defective in this respect will not be passed for erection until remedied in a manner satisfactory to the engineers.

All rivet holes may be punched, but no punch shall exceed the diameter of the rivet that is to follow it by more than $1/16"$ nor shall any die exceed the diameter of the punch by more than $1/16"$.

The depth of the rivet heads will be three-quarters the diameter of the rivets and the diameter of the heads one and five-eighths times that of the rivets. They shall be driven by power wherever possible. They shall be uniformly heated to a bright red heat and upset so as to completely fill the holes and finished with a hemi-spherical surface. All loose or imperfect rivets shall be cut out and tight

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and perfect rivets substituted for them to the satisfaction of the engineers.

All work assembled for riveting shall be thoroughly bolted together before riveting and at short intervals so as to prevent parts from springing apart and the rivets upsetting between them.

All pin holes must be accurately bored at right angles to the axis of members. Diameter of pin holes shall not exceed diameter of the pins by more than $1/32$ ". Eye-bars must be straight before boring and the holes must be accurately centered in the head and bar. All eye-bars belonging to the same panel, when placed in a pile, must allow the pin at each end to pass through at the same time without forcing. No welds will be allowed in eye-bars. All eye-bars must be bored. Thimbles and washers must be used wherever required to fill vacant spaces on pins and pilot nuts must be provided to protect threads when driving pins.

PAINTING.

All steel and iron must be cleaned of mill scale, dirt, rust or oil before receiving the shop coat. It is then to receive a shop coat of iron Oxide paint made up with pure raw linseed oil and Japan. No "bung-hole" dryers or boiled oil will be allowed. The pigment shall be natural Iron Oxide and shall contain at least 70% of $Fe_2 O_3$.

In the case of all rivet work, the surfaces coming in contact, the bottom surfaces of bed plates

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and all parts not accessible for painting after erection shall be painted with two coats of the same iron oxide paint.

After the structure is erected, all mud and dirt is to be removed, all abrasions in the first coat of paint must be brushed with a stiff wire brush and then touched up with the iron oxide paint. The entire structure is then to receive two field coats of carbon paint suitably tinted for distinction. The carbon paint shall be made up with pure raw linseed oil and Japan, no boiled oil or "bunghole" dryers will be allowed. The carbon pigment shall be gas carbon or a similar preparation containing not more than 50% of silica, free from acids and ground fine.

Field painting must be done only on a sunny day and the use of benzine or mineral oils will not be allowed. The paint is to be carefully, thoroughly and evenly applied with a brush so as to cover the entire surface and be well worked into all interstices. No painting shall be done in freezing weather and not until the preceding coat is thoroughly dry.

DESIGN.

In the design of the structure, the contractor is to use the loadings scheduled on Drawing No. B-23 and proportion the various members in accordance with the following unit stresses:

Tension—16,000 lbs. per sq. in. net section.

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Transverse—16,000 lbs. per sq. in.

Compression—(15,200-58 1/r) lbs. per sq. in.

Plate girders :

Tension—14,000 lbs. per sq. in. net section.

Compression—14,000 lbs. per sq. in. net section.

Shear—8,000 lbs. per sq. in.

Eye-bars—16,000 lbs. per sq. in.

Pins (bending)—18,000 lbs. per sq. in.

Anchor Bolts—20,000 lbs. per sq. in. at root of thread.

MAIN STRUCTURE.

The general framing of the building is shown on Drawings No. 8, No. B-23 and B-26. The sizes and strains shown are approximate only. All necessary anchor bolts and plates are to be furnished by the steel contractor and set by the Masonry Contractor. In a general way, the design shown must be followed but the contractor may make such variations to suit his shop practice as may be approved by the engineers.

BIDS.

Parties bidding on this work will submit a price per ton for furnishing all labor and material and erecting same on the site at Prince Rupert, B. C.

Bids are to be made out in duplicate and addressed to Mr. J. H. Guess, General Purchasing Agent, GRAND TRUNK PACIFIC RAILWAY, MONTREAL, CANADA.

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These specifications and plans are the property of Frank E. Kirby and William T. Donnelly, Engineers, 17 Battery Place, New York, N. Y., and are to be used for the purpose intended and no other.

SPECIFICATION

No. 6

FOR THE POWER STATION FOR THE
GRAND TRUNK PACIFIC RAILWAY,
PRINCE RUPERT, B. C.

Frank E. Kirby,
William T. Donnelly,
Engineers,
17 Battery Place,
New York, N. Y.
July 13, 1912.

SPECIFICATIONS

ACCOMPANIED BY DRAWINGS FOR A POWER STATION
TO BE ERECTED AT PRINCE RUPERT, B. C.

BEING A PART OF CONTRACT SIGNED BETWEEN

.....CONTRACTORS

AND

THE GRAND TRUNK PACIFIC RAILWAY.

1, GENERAL.

Whenever the word "Contractor" is used herein, it shall be understood to refer to party or parties preparing to perform the work as herein described.

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Whenever the word the "Company" is used herein, it shall be understood to refer to The Grand Trunk Pacific Railway.

Whenever the word "Engineer" is used herein, it shall be understood to refer to Frank E. Kirby and William T. Donnelly, Engineers.

2, CONTRACT NOT TO BE ASSIGNED.

The Contractor shall not assign, sub-let or transfer the whole or any part of the contract, or any interest therein, without the written consent of the Engineer being first obtained.

3, BOND.

The Contractor is to give to the Company, at the time of the execution of the contract, a good and sufficient bond with a surety company, as surety, as shall be satisfactory to the Company in the penal sum of Ten Thousand (\$10,000.00), conditioned on the full and complete performance by the Contractor of all the works and matters contracted for to be kept or performed by the Contractor.

4, DATES ON WHICH THE WORK IS TO BE COMPLETED.

It is to be mutually understood and agreed between the Contractor and the Company that the entire work herein described and shown on the drawings, shall be completed in accordance with the specifications and plans, and to be in good condition, ready for operation on or before the first day of.....

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6, METHODS AND APPLIANCES.

The Contractor is to employ such methods and appliances for the performance of all the operations connected with the work as will secure a satisfactory quality of work and a rapid rate of progress.

If at any time such methods or appliances appear to be inefficient or inappropriate, the Engineer may order the Contractor to increase their efficiency or to improve their character, and the Contractor must conform to such order; but the failure of the Engineer to demand such increase of efficiency or improvement shall not relieve the Contractor from any of his several obligations.

6, SHEDS, STOREHOUSES, ETC.

The Contractor is to include the building of such sheds, or other protections, as will be necessary for the work and the protection of materials, but the location of such structures must be such as not to interfere with the work of other Contractors.

The Contractor is to provide ample and efficient toilet arrangements on the premises, properly partitioned off, for the mechanics and laborers employed on the several works during their construction, and he is to guard against any nuisance in any part of the building. The temporary toilet arrangements are not to be removed until directed by the Engineer.

7, DEFECTIVE WORK.

Defective work and material may be condemned

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by the Engineer at any time before the final acceptance of the work, and when such work has been condemned it shall be immediately taken down by the Contractor and rebuilt in accordance with the plans and specifications. When defective material has been condemned, it shall be removed from the building and stored, or otherwise disposed of at the direction of the Engineer.

In case the Contractor shall neglect or refuse to remove or replace any rejected work or material within the time designated by the Engineer, such work or material is to be removed or replaced by the Engineer at the Contractor's expense.

8, EMPLOYMENT OF SUPERINTENDENT OR FOREMAN.

The Contractor is to employ and retain at the building, from the commencement of the work until its entire completion, a competent superintendent or head foreman (irrespective of any foreman employed by any sub-contractor), who shall see that the work is properly executed. Copies of all plans and specifications are to be in the possession of the superintendent, or head foreman, at all times. Instructions given to the superintendent, or head foreman, by the Engineer shall be considered as having been given to the Contractor, and the head foreman shall have power to execute such instructions.

9, FAILURE TO CONDEMN INFERIOR WORK.

Failure or neglect on the part of the Engineer to condemn or reject bad or inferior work or mate-

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materials while the work is in progress shall not be construed to imply an ultimate acceptance of such works or materials.

10, COMPLIANCE WITH ALL LAWS, ORDINANCES, ETC.

It is to be further understood that in all the operations connected with the work herein specified, that all laws, ordinances, rules and regulations controlling or limiting in any way the action of those engaged in the work or affecting the methods of doing the work, or materials applied to it, must be respected and strictly complied with by the Contractor or his agents. The Contractor is also to provide all necessary gate-keepers, watchmen, fencings, struttings, shorings, bridgeways, lights, signals and protections, and all other matters as may be necessary, or may be deemed necessary by the Engineer, for the due protection and security of the works, and for the protection and the safety of the public and of all buildings and property whatsoever, near to, or liable to be affected by the works. The Contractor shall also afford the utmost facility for public or private transit in respect to any roads or rights of way or rights of traffic which may be interfered with by the execution of the works.

11, PROVISION THAT THE CONTRACTOR SHALL PROTECT WORKS, PROPERTY AND PERSONS FROM INJURY.

The Contractor is to take every necessary, proper, timely and useful precaution against accident

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or injury to the works, or to any property, or to any person, by the action of pressure of water, whether the same shall arise from or be occasioned by floods, springs, rain, disruptions, leakage, frost or otherwise, and also against all other accident or injury to such works, property or persons, whether from wind, fire, tempests or from any other natural or artificial cause whatsoever, and whether arising from the execution or non-execution of the works. The Contractor is furthermore to forthwith repair, make good and defray any loss, damage or cost by or in consequence of any accident, or by or in consequence of the operation, whether negligent or not on the part of the Contractor that may be occasioned to the Company or City or to any person or persons injuriously affected thereby.

The Contractor is to defend at his own cost and expense any suit or suits at law that may be brought against the Company by reason of accident to any person or persons, or by reason of any neglect or oversight on the part of himself or his employees, or by reason of any damage done to adjoining properties, and he is also to assume and pay for any and all damages that may arise from any cause by reason of doing or not doing any part of the within described work.

12, NOTICES TO BE SERVED BY THE CONTRACTOR.

The Contractor is to give all notices required by any law or statute, or as directed by the Engi-

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neer, to give due and sufficient notice to all companies, such as water, gas, or other companies, and also to all City officials or to their respective departments having charge of the water or other pipes, or of the drains, sewers, highways, pavements and the like, previous to and at the completion of any work, in order that the proper persons may be enabled to attend and see that the pipes, sewers, highways, pavements and the like are secured, relaid, reinstated in a proper and satisfactory manner; and also in order that the proper persons representing the water, gas and other companies may be enabled to attend and secure, shore up, alter the position of, remove, relay and reinstate the pipes, mains, plugs and any other water, gas or other works, belonging to the city of government or to private corporations or persons.

13, *WORK TO BE DONE IN ACCORDANCE WITH TRUE
INTENT AND MEANING OF DRAWINGS AND SPECIFICATIONS.

All work described in these specifications, or shown on the drawings, to be executed to the true intent and meaning of said specifications and drawings.

14, CHARGE FOR EXTRA WORK.

If it should be found desirable that any alterations be made in the plans and specifications, the same shall be brought to the notice of the Engineer,

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and the cost thereof shall be determined before any contract is made for such work.

No charge for extra work will be allowed unless previously ordered in writing by the Engineer, and the cost of all extra work is to be determined on before the same is commenced and stated in the written order.

15, DRAWINGS AND SPECIFICATIONS TO SUPPLEMENT EACH OTHER.

It is further stipulated that these specifications and drawings are intended to supplement each other, so that any work shown on the drawings and not described in the specifications, or *vice versa*, is to be executed as if it were described in these specifications and set forth in the drawings.

16, FOREMAN AND WORKMEN TO BE SATISFACTORY TO THE COMPANY.

The Engineer may, by written notice, require the Contractor to dismiss forthwith any superintendent, foreman or workman he deems incompetent or careless, or a hindrance to the proper progress of the work.

17, PROVISION FOR THE PROMPT DELIVERY OF MATERIAL.

The Contractor must arrange for the prompt delivery of all material as needed, and he must at all times have a sufficient number of men on the work who shall act promptly in conjunction with

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the workmen of all other contractors, in order that there may be no delay in the erection and completion of the work.

18, LOCATION AND SIZE OF BUILDING.

The building is to be located near the center of the property as shown on the general location plan No. 1.

The construction will be substantially 132'-0" by 148'-0" and will consist of an operating room approximately 148'-0"x50'-0", with provision for three electrical units, two air compressors, switchboards and the necessary auxiliary apparatus, offices, lockers, etc.; a boiler room of approximately the same dimensions with provision for four boiler batteries of 8000 square feet of heating surface each and an economizer supported above them on the steel work; a chimney 11'-0" inside diameter by 175'-0" high with its flue system, and an emergency coal storage with the standard gauge railway track for supplying the fuel to the storage as well as the regular clam steel bucket supply.

19, EXCAVATION AND PUMPING.

The excavation for the foundations of the power house will be done by another contractor and this contract shall start from a grade one foot above the high water level. All concrete waterproofing and other constructions below this line will be done by another contractor.

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20, CONCRETE FOUNDATION WORK.

The concrete for the *entire foundation work up to and including Grade 13'-0"* shall be compared by measure of one part of Portland cement, three parts of clean sharp sand, and five parts of gravel or broken stone of a size that will pass in every way through a ring 2 inches in diameter. The stone or gravel shall be screened to remove particles smaller than $\frac{3}{4}$ inch and washed clean. The cement shall be.....Portland cement manufactured by the.....Co. The cement and sand shall be thoroughly mixed dry, the proper quantity of clean water shall then be mixed in, and the clean moistened stone added to the mass and the whole to be thoroughly mixed. The amount of water added shall be such as to assure a monolithic mass of concrete. The mixing of the concrete is to be done by a mixing machine, wherever possible, or as directed by the Engineer. Plank and timber curbs must be furnished by the Contractor, to confine the concrete in the shape and dimensions called for by the drawings; the concrete is to be laid in sections and in horizontal layers not exceeding two feet in thickness and must be wet enough that ramming may not be necessary. The concrete is to be well puddled and spaded next to the form with proper tools. Before any weight is placed on concrete, it must have as much time to set as can be conveniently allowed, and in no case less than 24 hours. All water used in making

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concrete and mortars must be fresh and clean; salt water is not to be employed. The Contractor is to block up under all main floor girders with concrete for the support of all of the main floor framing.

The Contractor is to furnish and erect a complete wooden form (or mould) for each part of the foundation, and the exposed surfaces of the concrete foundation work and walls are to be finished smooth.

All finished work to have planed forms.

21, CONCRETE WALLS.

The building walls shall be of concrete composed by measure of one part Portland cement, two and one-half parts of clean sharp sand and four parts of broken stone or gravel passing through a 1 inch mesh screen. The mass is to be confined in planed plank forms well wired and braced and laid in horizontal layers not exceeding 2 feet in height. The concrete is to be mixed in a machine satisfactory to the Engineer and must be so wet that, when well spaded against the forms, a solid wall with a good solid surface will be obtained. The inside of the forms shall be free from dirt, shavings or other foreign matter and shall be well soaped before pouring. The forms shall remain in place at least seven days after pouring.

Air holes or other unsightly places in the wall after the removal of the forms shall be cut out and patched and at the conclusion of the work the walls

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both inside and out shall be given a skim coat of neat cement applied with a brush.

22, FRONT AND SIDE STEPS.

The steps for the front and side entrances shall be constructed of concrete proportioned as for the foundation walls. The ballustrade walls shall be carried down to rock at the high water level. The steps shall be reinforced with two $\frac{1}{2}$ inch round steel rods to a step extending six inches into the wall on either side. The treads, risers, and platform in front of the door shall be given a $1\frac{1}{2}$ " granolithic finish, stained dark slate with lamp black and trowelled to a surface.

23, BASEMENT FLOOR.

The Contractor is to finish off the basement floor at elevation $+2'-10\frac{1}{2}$ " with a struck finish over the entire area of the operating room and such portion of the boiler room as are shown on the basement drawing No. F-6. Over these areas after the walls have been built and all machinery foundations and steel works installed, a $1\frac{1}{2}$ " granolithic finish is to be laid, well trowelled to a hard surface at elevation $+3'-0"$.

24, MAIN FLOOR ARCHES.

The Contractor is to provide the main floor arches for the areas in the engine and boiler rooms as shown on the plans. These arches in the engine room are to consist of six inch slabs of concrete

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reinforced with triangular mesh, wire cloth, or steel rods, the slabs to be surfaced 3 inches higher than the upper flange of the floor beams, El +13'-4½" the reinforcing to be continuous over the beam flange or lapped the full width of the flange. Suitable angle or cast iron curbs for all openings will be provided and set by the steel contractor. Over these arches a granolithic finish 1½" thick is to be laid well trowelled to a hard surface at Elevation +13'-6".

The arches over the ash runway in the boiler room shall be segmental arches 4" thick at the crown reinforced with expanded metal or wire mesh and struck level with the top flange of the beams. The arches for the areas at the sides of the boilers and between the center batteries shall be similar to those in the engine room. The areas at the back of the boilers shall be flat slabs reinforced as before four inches thick, cast in plank curbs in lengths not exceeding 24 inches and put in place afterwards. The upper surface of these blocks shall be trowelled smooth. Two 1½" sling holes shall be provided in each slab and joints shall be provided where the blow-off pipes pass downward. Suitable curbs will be provided around the stair well by the steel contractor. No arches will be provided for the economizer floor.

All floor arches shall be poured 1-2-1½-4 concrete as provided for the building walls.

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25, ASH PITS.

Eight ash pits are to be constructed by the Contractor as shown on the general plan and detail drawings. These ash pits are to be lined with 6 inches of 1-3-5 concrete laid on the fill and trowelled to a smooth finish on the upper surfaces.

Suitable ash door will be provided by another contractor but the Contractor will set them.

26, FILLING.

The Contractor is to fill in the areas under the boilers, the ash pits, the area between the ash runway wall and the outer boiler room wall, the area for the emergency coal storage and the area under the standard gauge track beyond the chimney. Over all these areas after the fill has been compacted the Contractor is to lay a six inch layer of concrete well trowelled to a smooth surface. That portion between the ash runway wall and the boiler house wall is to have a 1½" granolithic finish, well trowelled.

27, FINISH AROUND STOKERS.

After the rails and steel hoppers for the chain grate stokers have been installed that portion of the boiler house floor which is still unfinished is to be brought up to elevation 13'-4½" with concrete and a 1½ inch granolithic finish laid well trowelled to a smooth surface.

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28, FOUNDATIONS FOR MACHINERY.

All foundations for machinery, including the base for the chimney, shall be constructed of 1-3-5 concrete as provided for Foundations. Suitable plank frames well braced shall be provided and the concrete shall be laid in layers not exceeding 2 feet in thickness well spaded near the faces.

All anchor plates and bolts, provided by another contractor shall be set by template made by the Contractor and accurately aligned. The top surfaces shall have a struck finish 1 inch below the finished height to allow for grouting. After the machinery has been set, leveled and wedged up in the correct position the Contractor is to grout the joint with 1 to 1 Portland cement grout.

29, CARPENTER WORK.

Furnish strong fir centers for erecting the floor arches, and also for all arched windows and door openings. Centers shall be constructed of 2 inch planks laid close together and dressed on one side.

Centers are to be left in position until all masonry has set.

All cutting, jobbing, etc., that may be required shall be done, and all iron anchors, straps, bolts, etc., that may be required in connection with carpenter work, shall be furnished by the Contractor.

All door and window openings shall be provided with temporary doors and sash as may be directed.

All finished work shall be protected with planks.

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Furnish all grounds, furrings, brackets, etc., and provide all grounds for metal flashings, gutters, etc., and all blocking required to secure any portion of the other work of the building.

Furnish complete and substantial rough hardware for all temporary work throughout the building.

DOORS.

The outside doors to main entrance shall be $2\frac{3}{4}$ inches thick, the lower panels to be solid and provided with raised panel mouldings; the upper panels shall be glazed; jambs shall be 2"x8" with $1\frac{1}{2}$ x $2\frac{1}{2}$ " jamb stops securely fastened to jambs, which in turn shall be securely connected to the concrete walls; doors to be weather rabbeted at meeting rails; trim shall be a moulded and mitred back band trim 6" wide.

All other outside doors shall be $2\frac{1}{2}$ " thick with five solid panels, and provided with raised panel mouldings; jambs shall be 2"x8" with $\frac{5}{8}$ "x $2\frac{1}{2}$ " moulded jamb stops; panels shall not be less than $1\frac{1}{4}$ " thick; trim shall be a moulded and mitred back band trim 6" wide.

All interior doors shall be 2" thick with two solid panels with raised panel mouldings; upper panels, including transom over doors, shall be glazed; jambs shall be 2"x8" with $\frac{5}{8}$ "x $2\frac{1}{2}$ " moulded jamb stops; transom sash over doors shall be $1\frac{3}{4}$ " thick and shall be pivoted at sides; transom

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bars to be moulded 2"x7" in size; trims shall be moulded and mitred back band trims 6 inches wide.

WINDOW FRAMES AND SASH.

The window frames and sash shall be constructed as per the following: Sash to be $2\frac{1}{2}$ " thick, sills $2\frac{1}{2}$ " thick rabbeted, pulley stiles $1\frac{1}{8}$ " thick, inside and outside casings 1" thick, back lining 1" thick, and outside staff mouldings $1\frac{1}{4}$ "x $1\frac{3}{4}$ ".

All frames shall be set plumb and shall be kept well braced during the construction of the walls.

30, GLAZING.

The upper panels of toilet room door, including the transoms above, shall be glazed with a first quality maze wire glass $\frac{3}{8}$ " thick.

All other work throughout, including the exterior double hung sash, transoms, door panels and side lights shall be glazed with a first quality polished plate wire glass $\frac{3}{8}$ " thick.

All glazing shall be well bedded and puttied.

31, HARDWARE.

All interior doors to be hung on 6 inch loose pin steel butts—one pair to each door; the outside doors to be hung on 8 inch loose pin bronze butts—one pair to each door.

Boiler room outside doors to be hung on heavy approved "Reliance" overhead steel ball-bearing hangers, provided with steel tracks securely fastened to wall; these doors are also to be provided

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with steel roller door guards on floor at side jambs. The outside swing doors to be provided with "Blouts," or equivalent overhead liquid door checks of bronze complete. The outside doors shall be provided with extra heavy handles with plate escutcheons and cylinder locks. All interior doors, except as otherwise specified, to be provided with approved adjustable transom and sash openers of bronze. All double hung sash to be hung on "Queens" (or its equivalent), 2½" overhead pulleys with chains and cast iron weights, and to be provided with approved sash lifts and fasteners of bronze. The doors to stalls in toilet rooms shall be provided with nickel-plated brass spring hinges, door pulls and inside slide bolts; the slide bolts are to be connected to slotted nickel-plated outside name plates with the words "Occupied" and "Not Occupied" in white celluloid with black letter. The slate partitions in toilet rooms are to be supported on turned nickel-plated legs with wide floor flanges, and all slate partitions shall be fastened to backs by means of nickel-plated fittings throughout. All doors shall be provided with keys. All hardware shall be complete in every respect and satisfactory to the Engineer.

32, ROOF OF ENGINE ROOM.

To the 9" purlins of the engine house roof the Contractor is to bolt a 5"x4" fir spiking piece and over these are to be laid the roof of 2" tongued and

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grooved Douglass fir surfaced on both sides and well nailed to the spiking pieces. Two courses of roofing proper is then laid nailed with galvanized nails and tin protectors over which the roofing slate is to be applied or Keasby & Mathesson asbestos shingle. The Contractor is to state in his proposal which material he will use and submit samples.

33, ROOF OF BOILER HOUSE.

The boiler house roof will consist of flat slabs of 1-2 $\frac{1}{2}$ -4 concrete mixed as for the building walls reinforced with wire mesh, expanded metal, or similar material and 3" thick.

These slabs are to be joined in place on plank forms or centers with a struck finish on the upper side.

The entire surface of the roof is to be leveled up with a coat of sand and Portland cement for the application of the roofing; over the foregoing lay full five thicknesses of a good quality of roofing felt, lapping each successive layer at least two-thirds of its width over the preceding layer; firmly secure the felt with tins or cleats in a manner customary in the best composition roofing, and thoroughly mop the surface of each layer with a thin coat of a first class quality of roofing cement, in no case to be applied hot enough to injure the woolly fibre of the felt; over the entire surface of the felt thus applied spread a good surface of roofing cement, amounting in all, including what is used between the layers of felt, to not less than 10

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gallons of cement per 100 sq. ft. heated as hereinbefore specified. Completely cover the same with a coating of slag, using no slag larger than that which will pass through a $\frac{5}{8}$ inch mesh, and none smaller than that which will be caught by a $\frac{1}{4}$ inch mesh; the slag to be free from sand, dust and dirt, and is to be applied perfectly dry, and while the cement is hot. The roofing is to be properly graded to outlets as shown. All walls, bulkhead, economizer room and pipes passing through roof, etc., are to be thoroughly flashed and counter flashed with 20 oz. copper, secured in a proper and workmanlike manner; all flashing to be laid not less than 6" under felt, and is to extend well up on all walls, pipes, etc.

The economizer house is to be extended over the engine house roof with a wooden construction substantially as shown on the plans. The walls of this construction and the economizer house are to be covered with expanded metal or ferroniclese securely wired to girts as nailed to the ferring and plastered with 1" of 1 to 2 Portland cement mortar well clinched. The roof of the economizer house and extension is to be covered with expanded metal or ferro-inclose and plastered with $2\frac{1}{2}$ " of 1-2 Portland cement mortar well clinched. This roof is not to be felted. A suitable cement cornice and drip is to be built up of expanded metal and cement securely wired to the steel work.

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34, GUTTER AND TREADERS.

A suitable 20 oz. copper gutter is to be installed on the front side of the building. On the rear the engine house roof will drain to the boiler house roof and a suitable 20 oz. copper gutter and flashing will be provided along the rear wall sloping to a gooseneck at each corner. There will be four 6" cast iron soil pipe leaders, 2 on the front of the building on the outside and 2 in the rear corners of the boiler house on the inside. The back leaders shall be connected to a 12" terra cotta sewer running to the front of the building where connections shall be made with the front leaders and the drain pipe enlarged to 16" shall then be carried to a point above the discharge tunnel and connected to it in a light and workmanlike manner. This sewer pipe shall also be used for the drain from the toilet rooms.

35, CORNICE.

A concrete cornice as per detail shall be constructed along the front of the building which shall be extended as a string course entirely around the building.

The walls at the gable ends shall be stepped off and all wall capped with a 3" course of concrete projecting 2" either side of the wall, the upper and outer surfaces of which shall be trowelled smooth.

36, APPROACH TO ASH RUNWAY.

The Contractor shall construct an approach to

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ash runway as shown on the plans. The walls supporting the track girders shall be carried down to high water level and shall be at least 18" thick. The base concrete and side walls shall be 12" thick. The parapet walls shall extend three feet above the finished ground level and all exposed surfaces shall be trowelled to a smooth hard finish.

37, STEEL WORK.

The Contractor will prepare and struck finish all column bases for the reception of the steel work to the neat height required by the plans. He will set all necessary anchor plates and anchor bolts and after the steel work is in place with grout and flush all joints, seats, and other places where steel and concrete may come in contact.

The Contractor will furnish and set all reinforcing metal, wall anchors and will set all other iron work such as curbs, sills, corner guards, etc., embedded in concrete which is not fastened to the steel work and erected by another contractor.

38, PAINTING.

All woodwork is to be pruned before erection. After completion it is to be given three coats of white lead and oil in colors as selected by the Engineer. The underside of the engine room roof is to be given two coats of varnish. All exhaust metal work, both steel and cast iron, is to be painted two coats of lead and oil in colors as selected by the Engineer. All steam and other piping, after

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covering, is to be painted two coats of paint in colors to agree with the standards for power station work as shown by sample on file in the office of the Engineer.

39, OFFICES, LOCKERS AND TOILETS.

In the locations shown on the plans the Contractor will construct an office, locker room, store room and toilet room. The walls will consist of 4 inch concrete 10'-0" high slabs moulded in place. The roof will consist of a 3" concrete slab reinforced with suitable girders also reinforced. This roof will be strong enough to carry a load of 150 lbs. per square foot besides its own weight. The ceilings will not be plastered but will be washed down with Portland cement as provided for the walls.

The locker room will contain ten expanded metal ventilated lockers 16"x18" inside provided with hasps and padlocks (Yale & Towns make). The store room will be partitioned off from the lockerroom by a $\frac{1}{8}$ " wire $1\frac{1}{2}$ " diagonal mesh wire partition strengthened with 2" channels and extending up to the ceiling. This partition shall contain a wire door of similar design with wicket, Yale lock and heavy hinges. The store room shall be provided with 80-12" square by 16" deep sheet steel compartments and two sets of eight sheet steel shelves on pipe standards, shelves to be 8'x2' each. Two galvanized iron waste cans with self closing fireproof tops shall be furnished.

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Toilet room shall be provided with four wash basins, two urinals and three closets.

Water closets to be a syphon closet of one piece white vitreous porcelain with recessed flushing rim at back provided with low down cabinet finished oak cistern and oak seat. Cistern lined with 20 oz. copper and furnished with nickel-plated push button flushing release and removable cover.

Cistern shall be provided with all necessary valves and shall be connected with 1½ nickel-plated flush pipe.

Urinals to be one piece porcelain urinal with brass trap and push button flush valve. Cistern to be cabinet finished oak lined with 20 oz. copper 12"x12"x20" in size provided with all proper valves. Each urinal to have separate cistern wash basins to be one piece porcelain 22"x24" with nickel-plated waste trap and mountings, cold water compression faucet—no hot water fixtures.

All fixtures shall be supplied with separate stop valves with detachable handles.

Soil pipe to be 6" heavy cast iron soil pipe with oakum and lead joints, well caulked and fastened to wall with substantial iron fastenings. This pipe is to be trapped and discharged into the 12" terra cotta sewer before mentioned. All traps to be vented through a four inch vent pipe carried up three feet above the roof.

Water shall be taken from the water service pipe

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near the center of the station in a 2" galvanized iron pipe.

Proper cleanouts and traps are to be installed where required and the entire plumbing job to be tested in the presence of the Engineer before acceptance.

The backs for the wash bowls shall be slate 2'-6" high above the bowl. The backs and partitions for the urinals shall be 1" slate 5'-0" high and 11½" slate floor 24" wide shall be provided under them. The toilet rooms shall be built of 1" slate 6'-0" high set 6" above the floor on nickel-plated supports. Toilet room doors to be 11½" quartered oak five paneled with raised mouldings. Doors to receive 1 coat of filler and 2 coats of varnish of approved quality.

40, CAST AND WROUGHT IRON WORK.

All outside doors shall be provided with cast iron sills of section as shown on the details. Two sets of cast iron stairs with anti-slip removable treads will be furnished and installed, one in the boiler house and one in the engine room, and the hatchways shall be provided with 6" curbs and iron pipe railings of substantial construction. Suitable curbing and railing shall be provided for the roof of the office and toilet rooms, and a wrought iron ladder for access to the cage of the crane and the toilet room roof. All openings greater than 4' shall be provided with steel lintels of suitable

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strength and the soffits of all openings over 10' wide shall be reinforced with steel rods as well as lintels. Lintels and the reinforcing shall be put in place before that portion of the wall is poured.

41, CLEANING UP.

At the completion of the work the Contractor is to leave the entire plant broom-clean and ready for operation. All rubbish is to be dumped where directed by the Engineer.

42, LINING FOR STEEL STACK.

The Contractor is to furnish and lay the red brick lining for the 175'-0" steel stack. This lining is to be a 4" common brick wall laid on the angle supports provided on the inside of the stack and backed with 1" of a 1-3 mitred of Portland cement mortar and lime mortar.

BIDS.

Parties desiring to do this work will state prices as follows:

(a) Lump sum price for furnishing all labor and materials necessary to complete the work as herein called for in the most thorough and approved manner.

(b) The Contractor will state the shortest time required to complete the erection of the Power Station as called for and described herein.

(c) Bids are to be made out in duplicate and addressed to Mr. J. H. Guess, General Purchasing

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Agent, GRAND TRUNK PACIFIC RAILWAY,
MONTREAL, CANADA.

These plans and specifications are the property of Frank E. Kirby and William T. Donnelly, Engineers, 17 Battery Place, New York, N. Y., and are to be used for the purpose intended and no other.

July 12th, 1912.

SPECIFICATION

No. 24

FOR THE SUPER-STRUCTURE (EXCLUSIVE OF THE
STRUCTURAL STEEL) FOR THE SHIPBUILDING
SHED FOR THE
GRAND TRUNK PACIFIC RAILWAY,
PRINCE RUPERT, B. C.

Frank E. Kirby,
William T. Donnelly,
Engineers,
17 Battery Place,
New York, N. Y.

This specification, in connection with the accompanying plans, Drawings No. B-27, B-28 and B-29, is intended to convey to those familiar with this class of wooden building construction, such information as will enable them to arrive at a clear understanding of the quality and quantity of materials to be used and the character and cost of the labor involved to complete the work as called for

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herein in a first-class manner and to the entire satisfaction of the engineers in charge of the work.

GENERAL.

The work to be provided by the Contractor is to include all materials and labor of whatever nature requisite for completing and finishing the superstructure of the Shipbuilding Shed (with the exception of the structural steel framing) starting from the finished first floor level. All construction below this grade is covered by another contract.

This contract is to include all wooden sills, studs, posts, purlins and other framing, covering boards, roofing, windows, doors, gutters and leaders, painting, hardware, flashings and fastenings, skylights.

BASIS OF ESTIMATE.

The Contractor is to state his lump sum price for supplying and completing the building as shown on the plans and outlined herein.

BOND.

The Contractor is to give to the Company, at the time of the execution of the contract, a good and sufficient bond with a surety company, as surety, as shall be satisfactory to the Company in the penal sum of.....Thousand (\$.....) Dollars, conditioned on the full and complete performance by the Contractor of all the works and matters contracted for to be kept or performed by the Contractor.

(Bill of Exceptions—Defendant's Exhibit 20.)

DATE ON WHICH WORK IS TO BE COMPLETED.

It is to be mutually understood and agreed between the Contractor and the Company that the entire work herein described and shown on the drawings, shall be completed in accordance with the specifications and plans, and to be in good condition, ready for operation on or before the first day of.....

DEFECTIVE WORK AND MATERIALS.

Defective work and materials may be condemned by the Engineers at any time before the final acceptance of the work, and when such work has been condemned it shall be immediately taken down by the contractor and rebuilt in accordance with the plans and specifications. When defective materials have been condemned they shall be removed from the building and stored, or otherwise disposed of at the direction of the Engineers.

In case the contractor shall neglect or refuse to remove or replace any rejected work or material within the time designated by the Engineers, such work or materials are to be removed or replaced by the Engineers at the contractor's expense.

PROVISION THAT THE CONTRACTOR SHALL PROTECT
WORKS, PROPERTY AND PERSONS FROM INJURY.

The contractor is to take every proper, necessary, timely and useful precaution against accident or injury to the works or to any property or to any

(Bill of Exceptions—Defendant's Exhibit 20.)

person, by the action of pressure of water, whether the same shall arise from or be occasioned by floods, springs, rain, disruptions, leakage, frost or otherwise, and also against all other accident or injury to such works, property or persons, whether from wind, fire, tempests or from any other natural or artificial cause whatsoever, and whether arising from the execution or non-execution of the works. The contractor is furthermore to forthwith repair, make good and defray any loss, damage or cost by or in consequence of any accident, or by or in consequence of the operation, whether negligent or not on the part of the contractor, that may be occasioned to the Company or city or to any person or persons injuriously affected thereby.

The contractor is to defend at his own cost and expense any suit or suits at law that may be brought against the Company by reason of accident to any person or persons or by reason of any neglect or oversight on the part of himself or his employees, or by reason of any damage done to adjoining properties, and he is also to assume and pay for any and all damage that may arise from any cause by reason of doing or not doing any part of the within described work.

CHARGE FOR EXTRA WORK.

If it should be found desirable that any alterations be made in the plans and specifications, the same shall be brought to the notice of the Engineers

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and the cost thereof shall be determined before any contract is made for such work.

No charge for extra work will be allowed unless previously ordered in writing by the Engineers, and the cost of all extra work is to be determined on before the same is commenced and stated in the written order.

DRAWINGS AND SPECIFICATIONS TO SUPPLEMENT EACH OTHER.

It is further stipulated that these specifications and drawings are intended to supplement each other, so that any work shown on the drawings and not determined in the specifications, or vice versa, is to be executed as if it were described in these specifications and set forth in the drawings.

CARPENTER WORK.

All wood used in this construction shall be Douglas Fir and only dressed lumber of best standard grade in each class shall be used. The contractor shall set the 4" x 6" sills, as shown on the plans, on temporary blocking on the long side of the building and on the wooden floor for the ends of the building. On these sills the 3" x 10" studs are to be framed and well spiked. Studs at door are to be doubled with a 4" x 10" extra stud well spiked. Corner posts, two 3" x 10" studs well spiked. Columns for second floor to be 12" x 12" set on first floor and their feet held in place with 2" x 4" cleats. Caps

(Bill of Exceptions—Defendant's Exhibit 20.)

8" x 12", braces 6" x 8" framed and bolted with $\frac{3}{4}$ " bolts; stringers, 12" x 16" spliced on column tops. 4" x 12" floor joists, 25" c. to c. Balloon stringer, 2" x 12" on side with 10" x 12" posts in end walls to be chambered on all four edges, $\frac{3}{4}$ " wide. 4" x 12" plank well spiked. All posts, stringers and floor joists and floor to be surfaced all over. All columns to be chamfered on all four edges, $\frac{3}{4}$ " wide. 4" x 12" rafters spaced as shown and bolted to the steel purlins with $\frac{3}{4}$ " bolts and well spiked to studs. Headers beneath windows 3" x 4" and above windows 3" x 6" and 4" x 8". Headers above doors, 10" x 12". Headers for skylights, 3" x 12". Siding to be $1\frac{1}{4}$ " novelty siding surfaced both sides. Roof to be covered with $1\frac{1}{2}$ T. & G. boarding surfaced on under side. Corner boards to be $1\frac{1}{4}$ " x 5" clear stuff surfaced both sides with 2" quarter round at corner, as per detail. All cornice trim and moulding work to be of the detail and scantling shown on the plans and to be of clear stuff throughout.

WINDOWS.

All 2-sash windows to be double hung, 2-sash, 9-lights each, $10\frac{3}{4}$ " x $15\frac{1}{8}$ " double thick glass, well tacked and puttied. Frames to be of $1\frac{1}{4}$ " stuff, as per detail; sills to be $2\frac{1}{2}$ " x 8"; sash $1\frac{3}{4}$ " thick with $\frac{1}{2}$ " parting bead and $1\frac{3}{4}$ " moulded stop bead. Inside sill and apron $\frac{7}{8}$ " x 4".

Side windows in second floor to be single sash fixed, 9-light, glazed with $10\frac{3}{4}$ " x 15" double thick

(Bill of Exceptions—Defendant's Exhibit 20.)

glass. Sash $1\frac{1}{2}$ " thick with $1\frac{1}{4}$ " frames. 2" x 8" sill and moulded stop bead.

SKYLIGHTS.

Skylight frames to be $2\frac{1}{4}$ " x 12" and 3" x 16" with 4' sash and glazed with 14" x 4'-0" double thick ribbed glass, all moulded, flashed and hung as per details.

DOORS.

All doors to be 3" thick, framed and glazed as per details. Door frames of $1\frac{1}{2}$ " and $1\frac{1}{4}$ " stuff with suitable cap and water-shed.

FASTENINGS AND FLASHINGS.

The contractor will furnish all fastenings such as bolts, anchors for attaching the wood framing to the steel or to itself. All flashing shown or needed including the ridge-roll, shall be of No. 20 galvanized iron.

GUTTERS AND LEADERS.

The contractor will furnish and place two lines of 8" galvanized iron gutter No. 18 gauge, properly supported with galvanized hangers and supports. The gutter on the rear of the building will be provided with four goosenecks and 4" leaders of No. 20 galvanized iron properly supported and leading to within 6" of the ground level. All leaders must be securely supported with galvanized supports.

(Bill of Exceptions—Defendant's Exhibit 20.)

HARDWARE.

Sash weights—Cast iron of sufficient weight.

Sash pulleys

Hangers for doors

Handles for doors

Locks for doors

Bolts for doors

Skylight hinges

Skylight lifters

} Heavy pattern and substantial design, subject to the approval of the Engineers.

PAINTING.

All outside woodwork is to be painted with three good coats of white lead and pure linseed oil properly tinted to meet the approval of the engineers. All flashing shall be painted with one heavy coat of metallic paint before being put in place.

ROOFING.

Parties desiring to do this work are to submit prices per 100 sq. ft. of roofing as follows:

(a) Slate roof layed over two thicknesses of roofing paper, well secured with galvanized iron nails and tin protectors.

(b) Keasbey & Mattison Co. Asbestos Shingles or equal, layed over two thicknesses of roofing paper and well secured with galvanized iron nails through tin protectors.

(c) H. W. Johns-Manville Co. 3-ply, J.-M. Asbestos Built-up Roofing, built up, applied and secured in strict accordance with the specifications of the Company.

(Bill of Exceptions—Defendant's Exhibit 20.)

Parties submitting prices as called for, may at their own discretion, submit as additional bids, other equal quality of roofing, but in doing so must submit full specification giving detail construction of roofing. No alternative, however, will be considered unless prices are first given upon the kind and quality of roofing called for on Page 6 of this specification.

BIDS.

Parties desiring to perform this work will submit prices as follows:

(a) Lump sum price for all material and labor and the erection of same, exclusive of the roofing.

(b) Price per 100 sq. ft. for roofing as called for on Page 6 of this specification.

(c) State the shortest time necessary to deliver all the materials herein called for at Prince Rupert, B. C.

(d) State the time required for completing the erection after the completion of the erection of the steel framing.

(e) Bids are to be made out in duplicate and addressed to Mr. J. H. Guess, General Purchasing Agent, GRAND TRUNK PACIFIC RAILWAY, MONTREAL, CANADA.

These plans and specifications are the property of FRANK E. KIRBY and WILLIAM T. DON-

(Bill of Exceptions—Defendant's Exhibit 20.)

NELLY, Engineers, 17 Battery Place, New York, and are to be used for the purpose intended and no other.

Thereupon the defendant, to sustain the issues upon its part, offered in evidence the deposition of one W. N. CONCANON, taken according to stipulation, in the City and County of San Francisco, State of California, and in the Northern District of California, on the 29th day of September, 1916, before Eugene W. Levy, a Notary Public in and for said State, County and District, which deposition was taken upon written interrogatories, in answer to which witness testified as follows:

**(Deposition of W. N. Concanon for
Defendant)**

Witness testified that he was a constructing engineer at 525 Market Street, San Francisco, California, residing at 601 Fifty-fourth Street, Oakland, California; that he had been engaged in his present occupation for thirty years, ten years president of the W. N. Concanon Construction Company; that he graduated from the A. Van der Naillen School of Engineering; that, as president of the company and acting as its general manager, he had been required to estimate construction work and to manage the execution of contracts, all of which had required him to be thoroughly familiar with general construction and engineering practice in con-

(Bill of Except'ns—Deposition of W. N. Concanon.)
nection therewith; that he had built the steel cantilever ship building crane at Mare Island, California, a structure with six hundred (600) feet runway and eighty-five (85) feet above ground, a cantilever crane above it, and a steel saw mill at Mare Island, steel foundry building, steel machine shop, steel boat shop, steel and corrugated iron machine shop, steel and concrete store house, steel and concrete quay walls, also ten (10) wireless telegraph stations for the United States Navy Department with steel and wooden masts on the Pacific Coast from San Diego to Prince William Sound, the General Naval Hospital at Puget Sound Naval Station, seven (7) steel industrial buildings at Pearl Harbor Naval Station, and steel and concrete store house and administration building at Pearl Harbor, also quarantine buildings at Honolulu, and numerous bridges, Court Houses and jails and smaller structures at various points on the Pacific Coast, of all of which he had been contractor and general manager and with the details of which he was familiar; that he had also built the car houses for the Southern Pacific Company at Albina, near Portland, Oregon, and was familiar with all classes of general construction and contract work.

Witness further testified, in connection with the extent to which structural steel is fabricated in the shop before shipment when shipment is to be made by boat, that owing to the placing and storing of fabricated structural steel, either on deck or in the

(Bill of Except'ns—Deposition of W. N. Concanon.)

hold of ocean vessels, where the material is subjected to pressure of the different members, in addition to their constant movement during transit caused by rough weather, the fabricated steel during such transportation is subjected to the pitching, rolling and working of the ship, often causing severe damage to it; that for that reason the shop drawings are prepared so as to eliminate the riveting of all projecting parts which would be subject to being torn off or broken from such causes, and the length and projections prohibited by common carriers, besides being subject to a much higher tariff from being rated by the cubic measurement of the material instead of by weight, and unnecessarily increasing the cost of shipment; that the usual practice is to complete each member, including gusset plates on the same, when gusset plates are comparatively small, leaving all struts and other members to be riveted to the gusset plate in the field, for the reasons previously stated.

Witness further testified that structural fabricated steel, when shipped by rail, is usually riveted as nearly complete as possible, each member of the structure being subject to the necessary riveting in the field to connect it to each other member when it is erected and in all cases controlled by the regulations of the railroad in reference to length of members, clearances for bridges, tunnels, etc.; that fabricated structural steel shipped by water is usually knocked down, so as to avoid damage in

Bill of Except'ns—Deposition of W. N. Concanon.)

transit; that owing to the size of vessels and their catches and other necessary restricted shipping regulations, it is usually necessary to ship fabricated members knocked down and of much more limited size and shape than if transported by rail; that the principal reason, however, for limiting the size and shape of fabricated members and leaving them knocked down was, as already stated, the danger to which they would necessarily be subjected when transported by water.

Witness further testified, that the shop drawings are followed absolutely in fabricating structural steel, and control the fabrication of the various members as to sizes, shapes and connections, and also indicate the number and position of the rivets, and whether they are shop or field driven; that each member is marked by letter and number on the drawing corresponding with the mark on the fabricated member. Witness further testified that the customary and usual manner of preparing such shop details is employed when the same are to be used in fabricating such structural steel, as is involved in this case, for shipment by water transportation; that in the fabrication of structural steel for water shipment, the shop drawings are so designed that they comply with the rules and regulations of the different shipping concerns as to length of members, angular projections, to be attached by rivets to each piece, and a due precaution on the part of the shipper to provide against unreasonable

(Bill of Except'ns—Deposition of W. N. Concanon.)

damage to the ship which is entailed by the loading, discharging and unavoidable movement of the material on the vessel in rough weather.

Witness further testified that he had carefully examined the specifications, original designs, and shop details covering the power house, the ship shed, the machine shop, boiler and blacksmith shop, foundry and coal storage buildings, prepared by the American Bridge Company for the defendant company for use in constructing and erecting the buildings of the Grand Trunk Pacific Railway at Prince Rupert, British Columbia, and understood them clearly; that he considered that these shop details show the customary and usual amount of fabrication for water shipment, and that they were designed in the customary manner; that he had erected about ten thousand tons of steel at various places, subject to shop drawings made for water shipment, and knew from experience that in some instances no gusset plates were riveted on main members, and in general were less favorable to the erector than in this work; that he had examined the shop drawings previously referred to for the Prince Rupert work, and found that, according to his judgment, the fabrication and riveting was carried on and completed as fully as could have been expected by any contractor.

Witness further testified, referring to Defendant's Exhibit 11, that plate P-1 and plate P-2 on column JS-1 showed a gusset plate all riveted in the

(Bill of Exceptions—Deposition of W. N. Concanon.)

field in accordance with the shop drawing; that it would have been imprudent to rivet these plates to the columns in the shop for the reason that when stowed in the hold of a vessel under hundreds of tons stored on top of the plates, independent of the column, they would probably have been badly damaged; that on the same column the plates having a comparatively small projection are shown riveted in the shop.

Witness further testified, referring to Plaintiff's Exhibit "C", that on strut JK-1 the plate is riveted to the strut in the shop, although the plate is of such dimensions (though smaller than plate P-1 on Defendant's Exhibit 11) as to endanger its safety in transit; that this was probably done on account of the inaccessibility of the rivets which the erector could not reach, and to a pin hole which might become misplaced.

Witness further testified, referring to Plaintiff's Exhibit "P", that, in his opinion, it is exceedingly dangerous to ship assembled trusses by water, although this might be done in rare instances.

Thereupon, in response to a question as to whether or not the witness was familiar with the rules, regulations and requirements in ships between November 29th, 1912, and December 17, 1913, governing the manner of loading and transporting for export in or aboard vessels of structural steel, to which question plaintiff objected on the ground that it was incompetent, irrelevant, and immaterial, and

(Bill of Except'ns—Deposition of W. N. Concanon.)

indefinite in not being limited to show whether or not it covered the general custom or simply the custom of the defendant company, or of the American Bridge Company, which objection the Court overruled, witness further testified that he could not retain in his memory the many and intricate rules or shipping regulations governing shipment of structural steel upon any particular date; that when he had occasion to ship structural steel, he took each separate consignment and got direct advice upon the subject.

Witness further testified that he was not connected in any way with the operation or management of any of the work carried on by plaintiff company at Prince Rupert, British Columbia, and that he had never had anything to do with either party to this action, except that when he could not get an order of steel cheaper from anybody else, he would sometimes give the defendant company an order.

Thereupon the defendant, to sustain the issues upon its part, recalled as a witness one FRANK EDWARD FEY, who having been already duly sworn, testified as follows:

**(Direct Examination of Frank Edward Fey
Recalled for Defendant)**

Witness testified, referring to Plaintiff's Exhibit "P", concerning which W. N. Concanon had

(Bill of Exceptions—Testimony of Frank E. Fey.)

testified that it was exceedingly dangerous to ship assembled trusses by water, that said Plaintiff's Exhibit "P" showed a truss shipped knocked down; referring to Plaintiff's Exhibit "C", and to the pin hole shown thereon, which had been mentioned by W. N. Concanon, that the surrounding plates, as well as the large gusset plates, were shown riveted to the main member or the strut on account of the pin hole connection; that these plates were assembled in the shop and riveted, and then the pin hole was drilled, and that after that operation was completed, there was an absolutely true pin hole through all these plates; that the reason for riveting the gusset plate to the main member was that, by riveting the plates and then drilling the pin holes, an absolutely perfect pin hole was secured at perfect right angles to the main member; that this certainly could not have been done as readily if it had been left to be driven in the field; that furthermore, in this instance, the whole load carried by the strut was transmitted to this pin, so that, if the bearing between the metal and the pin were not absolutely true, something would be liable to buckle or cramp. Witness further testified, referring to Defendant's Exhibit 19, concerning which Stetson G. Hindes had testified that it would be imprudent to ship the cross bracing shown thereon in any other way than as indicated, that the bracing showed went between the bottom chords of the trusses to keep the trusses in their proper align-

(Bill of Exceptions—Testimony of Frank E. Fey.)

ment and absolutely true and vertical; that the large gusset plate was fastened onto the bottom chord of the truss, and that the bracing was fastened to the bottom chord of the truss, and that, according to the drawing, brace angles, the strut, the gusset plate, and all were shipped loose.

Thereupon the defendant, to sustain the issues upon its part, called as a witness one CHARLES C. OVERMIRE, who was duly sworn and testified as follows:

**(Direct Examination of Charles C. Overmire
for Defendant)**

Witness testified that he was contracting manager of the United States Steel Products Company, having been engaged in his present occupation since 1909; that after leaving the University of Minnesota in 1898, he erected some power houses and shaft houses at Butte, Montana, then went to Douglas Island, Alaska, in charge of some work in connection with the Homestake, thence back to Minneapolis as assistant superintendent of the Twin City Iron Works, afterwards becoming assistant superintendent of the Minneapolis Steel Machinery Company's plant; and that in 1902, he went with the American Bridge Company as estimator. Thereupon plaintiff admitted witness' qualifications as an expert, and waived further qualification of him as such.

(Bill of Exceptions—Testimony of C. C. Overmire.)

Witness further testified, with reference to the general qualities of the trusses used in the buildings at Prince Rupert, which were the subject of this controversy, that there were two types of trusses in these buildings,—the so-called peak truss and a flat truss; that a truss is designed to carry only one load, a vertical or roof load, and that the truss must be absolutely perpendicular in order to carry that load; that a truss can vary in length and depth, and the load which it can carry is directly proportionate to the metal which is in the truss itself and to the depth of the truss; that a shallower truss would be much heavier metal than a deeper truss; that if a truss is supported on its side, it will collapse, there being not enough strength in the truss to carry it; that, therefore, a truss cannot be laid into a boat flat; that the hatches were not deep enough and the hold was not deep enough to load the trusses in a vertical position; that where the truss is a narrow, flat truss, it is sometimes possible to load it in the 'tween decks.

Witness further testified that the blue print detail, previously shown to the jury for a truss for the lean-to to the power house, was a flat truss, which could be put into the 'tween deck where it would be impossible to put a peak truss; also that in loading in the hold of the boat, a truss cannot be got down if there is any dunnage or other material in the bottom of the boat; that that was the case in this particular shipment.

(Bill of Exceptions—Testimony of C. C. Overmire.)

Witness further testified that if one of these peak trusses were shipped riveted together, it would have to stand on the long chord of the truss, which would evidently be the top part of the truss, if half of the truss be bottom side up; that if the truss were gotten into the bottom of the boat, it was not strong enough to support any load whatever, and there would be crumpling in the structure. Witness further testified that one of these trusses for the machine shop or boiler house would weigh about three thousand (3000) pounds; that when lowered into the hatch, it has to be moved further into the hold entirely by hand; that if these trusses were laid on their side on the bottom of the vessel, or in any way but perpendicular, nothing could be loaded on top of them, and there would just be a light load, nothing but trusses scattered over the bottom of the boat; that no other steel could be packed on top of them and, if there were, the angles would all crimp out and be bent out of shape.

Witness further testified that the large gusset plates projecting out from the sides of the members just blocked so much space in the hold of a boat, and if anything dropped on them, it simply bent them down and crimped them up; that in all work such as this, where the holes are in and tight fits are necessary, it is hard to bend the material back in shape again and make it join; that it is not easy to put on large gusset plates where they extend out so there is danger of bending them

(Bill of Exceptions—Testimony of C. C. Overmire.)

down. Witness further testified that the average thickness of one of these large gusset plates, such as are shown on the detailed drawings in evidence in this case, ran from three-quarters ($\frac{3}{4}$) of an inch to half ($\frac{1}{2}$) an inch and five-eighths ($\frac{5}{8}$) of an inch.

Witness further testified that he was familiar with the manner in which this particular steel was shipped from the factory to the site at Prince Rupert; that it was fabricated at the Ambridge plant of the American Bridge Company, loaded on cars up to New York City, and there transferred to steamers by the stevedoring company in charge; that if this steel had come by rail, it would have been loaded and secured right at the factory; that there would have been a large difference in the amount of fabrication done in the factory if the steel had come by rail instead of by water; that the trusses would have been loaded in a vertical position right on the cars at the shop; that if a truss were not longer than a single car and not higher than the thickness which the railroad companies allowed for tunnels, the entire truss would be assembled, but if it were too long to go on a single car, it would be cut in two and loaded on the inverse side, on the top chord, and they would all have been loaded, wired together and securely fastened, so that they must remain in a vertical position during the trip; that none of these trusses would ever have been loaded flat on the car.

(Bill of Exceptions—Testimony of C. C. Overmire.)

Witness further testified that the buildings at Prince Rupert were what were termed light mill buildings, some of them just composed of columns and trusses and light material to support the sheathing; that the buildings contained a large amount of truss work in proportion to the total amount of work involved; that this work was not nearly as heavy, nor as stiff, as bridge work, and would not stand the strain of shipping as well; that a bridge has to take more moving than a building truss, which only has to stand one load, such as it might get from snow.

Witness further testified that a steel under-frame for a car is rectangular in shape, the main sides of it being generally heavy channels, with a heavy cross frame across each end, and a longitudinal brace running right through, that the frame is also braced up to take any load, as it has got to take the load that the car is supposed to carry, as concentrated loads come on the ends of car frames, and as a car has to stand the jolting for compressional strain and all the pull of the entire load of the train, so that it is really a very rigid piece of steel; that it can be hooked onto in any place without disturbing it, as it is one of the most solid and rigidly constructed pieces turned out of the shop; that car frames cannot be hurt as can little light trusses, such as these on the Prince Rupert work.

Witness further testified, in referring to the difference between the character of the steel shipped

(Bill of Exceptions—Testimony of C. C. Overmire.)

on this job and the character of the steel usually included in the ordinary building contract, that in a building there are heavy columns and heavy beams and girders, which, on account of the space in a building, are required to be kept as small and compact as possible, and are, therefore, very heavy members of very little bulk, while in these roof trusses there is a lot of bulk and no steel. Witness further testified that the Lincoln High School, concerning which there had been testimony, was a typical style job, with columns, girders and beams; that he had figured on the job; that the roof trusses on the new O.-W. R. & N. freight depot, which had been mentioned, were just light columns and trusses; that the Lincoln High School or the freight shed would have trusses somewhat similar to these trusses.

Witness further testified that the steamship companies do not like to handle members of thirty-five or forty feet long, or bulky members either; that there is no rate published on large members; that the weight is limited by the capacity of the ship's tackle, and that usually on coastwise shipments, bulky light roof trusses are loaded like a deck load, loaded on deck, and very, very seldom is any of this light material loaded in the hold; that if the vessels have a cargo which will permit them to make a deck load, they will quote a rate on the material, but if the capacity of the ship is filled up, or if their load is so arranged in the hold that they cannot

(Bill of Exceptions—Testimony of C. C. Overmire.)
carry a deck load, a rate cannot be secured, that then a special rate by agreement must be made in each particular case.

Witness further testified that this particular steel came by water over the Maple Leaf Line from New York around the Horn; that he did not know anything about the restrictions on deck loads for vessels coming around the Horn, or whether such vessels permit steel to be carried as a deck load.

Witness further testified that in loading a ship, a ten thousand (10,000) ton ship, ten thousand (10,000) tons of rails cannot be loaded in the bottom of the ship or the ship would never get to its destination; that there has to be a certain amount of bulk; that there had to be a metacentric point; that, for example, a four thousand (4,000) ton ship, such as these ships were, would have to load part of the material in the hold, and part of the material in the spar deck or 'tween deck; that vessels liked to take the steel cargo for ballast and get a bulk cargo also; that in this particular instance there was no bulk cargo available, and the ships bringing the steel carried nothing else besides. Witness further testified that the location had a lot to do with the way in which the steel was shipped; that the charter of the ships, carrying this steel to Prince Rupert, was made to the furthest northern point to which a charter has ever been made; that there are no regular carriers going to this point, and that the defendant company had ar-

(Bill of Exceptions—Testimony of C. C. Overmire.)

ranged for these three ships; that they had tried to get cargo for them and could not do so; that it was necessary for them to make these charters for this special trip, and, being in a new and sparsely settled territory, there was no general cargo to go along.

Witness further testified, referring to the manner in which the sub-contract with plaintiff company was entered into, that the New York office of the defendant company received an inquiry from the Grand Trunk Pacific Railway for these buildings; that, after the estimate of the weights had been made, the estimate was sent to him, and he was requested to give the New York office an estimate on the erection; that the estimate showed that the defendant company had been asked to figure in three (3) ways: one on the basis of the steel fabricated at Chicago for quick shipment by rail; another, shipment from Pittsburg using mill material, on longer delivery, and shipping by rail, and the third, a long time delivery, figuring on Pittsburg fabrication of the mill material and shipping by water; that he knew he had Canadian concerns competing on this job who only pay a ten per cent (10%) duty on plain material, while defendant company was paying thirty-five per cent (35%) on the fabricated material, so that it was necessary for defendant company to avail themselves of every advantage they had in order to land the work; that, therefore, it looked to him from the start as if water

(Bill of Exceptions—Testimony of C. C. Overmire.)

shipment would be necessary; that when he received the inquiry, he got in touch with Poole, explained the job to him, and asked him if he would care to figure with defendant company, and that Poole replied in the affirmative, so that he and Poole went to Prince Rupert on the first ship they could get, to look over the site and see what had to be done.

Witness further testified that, when he got to the site of the proposed plant, there was a piece of dock away out in the ocean; that he got off the ship, took a launch, went down to this dock and met Pillsbury, the chief engineer; that they were running gopher holes into the hill back of the shore line, blasting the hill away; that it was about eight hundred and fifty (850) feet from the dock to the shore line, and about one thousand (1,000) feet across; that Pillsbury stood on the dock and pointed out where the foundry building was to go; that witness said, "I don't see much that looks like a foundry building"; that Pillsbury said there was twenty-two (22) feet of water over it at that time; that it was entirely filled in with rock blasted down from these mountains; that that was all there was when Poole and the witness first went to Prince Rupert.

Thereupon defendant offered in evidence a sketch of the Prince Rupert site prepared by the witness, and which was identified by the witness, received in evidence and marked "Defendant's Exhibit A-21."



WATER

850 ft. (about)

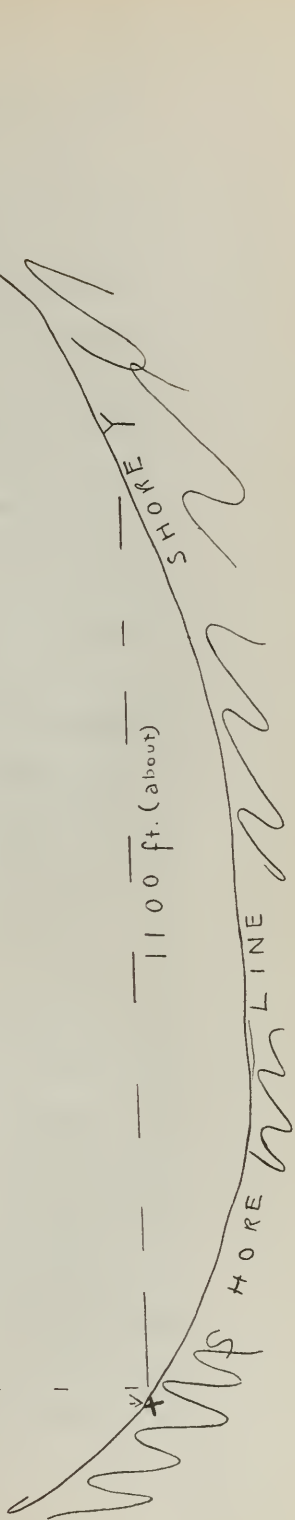
1100 ft. (about)

LINE

SHORE

LINE

SHORE



(Bill of Exceptions—Testimony of C. C. Overmire.)

Witness further testified that he and Poole went to Pillsbury's office after they had been out and seen the water, and got there a set of plans and specifications, which they looked over and saw the scope of the work; that witness had an estimate showing the amount of tonnage in the different buildings; and witness and Poole talked with Pillsbury on the dock regarding the possibilities of the site, and got all the information they could; that witness and Poole did not take any plans or specifications away; that they saw them in Pillsbury's office; that Poole was with the witness when they saw the plans and specifications together; that Poole and witness inspected the plans and specifications together.

Witness further testified that, after he and Poole had gotten all the information together, they took the ship and started back to Seattle; that on the way to Seattle, Poole arrived at the price at which he would put up the work, and from Seattle witness wired the price into New York, and at that time told Poole that if defendant company got the contract on the basis of the buildings to be erected, defendant company would give Poole the contract at he price he mentioned. Witness further testified that immediately upon leaving Prince Rupert, he and Poole started talking over the price; that the first price Poole mentioned was about Fourteen (\$14) or Fourteen Dollars and a half (\$14.50) a ton; that then they thought of some other condi-

(Bill of Exceptions—Testimony of C. C. Overmire.)

tion which might arise, and the price went up to Fifteen (\$15), Sixteen (\$16), Seventeen (\$17) and finally to Eighteen Dollars (\$18); that then they had covered everything, so witness accepted that price, and that was the price which was turned in and at which the contract was let.

Witness further testified that at that time he spoke to Poole concerning the way in which this steel might come, whether by rail or by water; that Poole stopped with witness at Vancouver, when witness took up with the railway the question of shipping by car-ferry or barge, and witness advised Poole that, in his opinion, in order to meet competition, it would be necessary for this material to move by water, it being considerably cheaper, owing to the fact that it would move in foreign bottoms from this country to British Columbia.

Witness further testified that Poole made no difference in his price, nor any reservation as to change in price depending upon the way in which the steel might come, whether by rail or by water; that the conversation between witness and Poole, in regard to the amount of fabrication which the steel would have undergone before it arrived, came up in connection with one print only, a print on the ship shed; that they looked over the plans, and there was only one detail sheet in Mr. Donnelly's plans that showed anything at all which would form the basis as to the amount of work which would have to be done in the field; that this ship shed plan was

(Bill of Exceptions—Testimony of C. C. Overmire.)

the one that they looked at; that Poole asked the witness about how that would come out; that witness was not conversant with the boat it would come on, or the size of the hatches, and replied that the material would be shipped as was customary for that class of material; that Poole's figure was based upon that supposition. Witness further testified that a plan and an original design are one and the same thing; that they are prepared by some agent of the owner; that from those plans the shop details for the steel work are made; that the original plans in this instance were made by an engineering firm in New York, Kirby and Donnelly, Mr. Donnelly being in charge, employed by the Grand Trunk Pacific Railway; that in this particular instance, the specifications which Mr. Donnelly prepared stated that the details must all be approved by the engineer; that defendant company first ordered from these general plans the material from the mill, next prepared the details and sent them to Donnelly's office for approval; that these details must be approved by the engineer before a hole can be punched or any of the cutting done at all; that the details were returned to the defendant company either approved or for correction; that if they were approved, they were turned into the shop and the shop work commenced; that if they were not approved, they were corrected and returned to Mr. Donnelly, and that process kept up until they were finally approved, and then the



(Bill of Exceptions—Testimony of C. C. Overmire.)

work went on in the shop; that none of the steel in this case was fabricated without having the details approved by Mr. Donnelly.

Thereupon defendant offered in evidence a blue print plan, which was identified by the witness, received in evidence and marked "Defendant's Exhibit 21."

(Bill of Exceptions—Testimony of C. C. Overmire.)

Witness further testified, referring to Defendant's Exhibit 21, that it showed the general construction, a section through the ship shed; that it showed a column supporting a cantilever truss which hangs out over the launching ways and the two crane runways which hang in the top of the building; that said Defendant's Exhibit 21 was the plan to which witness had previously referred as having seen in Pillsbury's office; that both witness and Poole saw said Defendant's Exhibit 21 at that time. Witness further testified that Poole asked him how much of this truss would come riveted up, that these plans do not indicate the riveting, either shop or field; that the connections are all left to the draftsman to figure out the strength of the connection and the number of rivets necessary to develop the full strength of the member; that not knowing how that was coming out, witness made the reply which he had previously stated, namely, that the material would be fabricated and shipped as was customary for this class of material.

Witness further testified that nothing was ever said between him and Poole about promising to reimburse plaintiff company in case they were put to any extra expense for fabricating.

Thereupon defendant offered in evidence a sketch of the site at Prince Rupert after construction work had commenced and when the steel was first de-

(Bill of Exceptions—Testimony of C. C. Overmire.)

livered by the defendant company at the dock, which sketch was identified by the witness, received in evidence and marked "Defendant's Exhibit 22."

(Bill of Exceptions—Testimony of C. C. Overmire.)

Witness further testified, referring to Defendant's Exhibit 22, that the fill had been completed out to the point shown, and then ran down underneath the dock to the ship shed; that the site is all filled up to grade at the present time.

Witness further testified that there was never any understanding or agreement between him personally and Poole concerning the manner in which plaintiff company should carry on the work, or when they should begin the work; that it was transmitted through witness from Donnelly; that defendant company never, on its own responsibility, promised plaintiff company to reimburse them for any delays which they might experience; that witness believed that Donnelly at one time wrote a letter stating that if plaintiff company would follow his instructions and proceed with the work as he ordered them to, he would be responsible for delays; that the understanding between plaintiff company and Donnelly was transmitted through witness' office; that on the buildings there was not much delay, but that Poole did wait for pontoons for the floating dry dock; that these pontoons had not been completed by the people who were building them for the Grand Trunk Pacific Railway, and that there was a space of time, of about two months, when there was no work to be done at the site. Witness further testified that these pontoons were for a patented dry dock; that a pontoon is simply a large barge on the sides of which is erected steel

(Bill of Exceptions—Testimony of C. C. Overmire.)

caissons, on top of which are the pump houses; that in order to sink the barge, sea-cocks are opened letting water in, and the pontoon sinks to a certain point, beyond which its own buoyancy prevents it from sinking, that then the ship is run in on the barge, the pontoon pumped out, and the whole structure brought out; that these pontoons were the barges underneath forming the bottom of the dry dock; that they were built by the Grand Trunk Pacific, or by some contractor in their employ.

Witness further testified that the specifications covered the manner of furnishing of these pontoons to the plaintiff company, and that it was never discussed between witness and Poole until such date that it looked as if there was going to be a delay; that then Donnelly ordered Poole to go ahead with two pontoons, and the work was tied up waiting for the second pontoon.

Witness further testified that Defendant's Exhibit 20 was a copy of the specifications which he saw in Pillsbury's office; that he could not say whether or not it was the exact copy as he did not go over them; that this copy was made by being typewritten on a very thin piece of paper or tracing cloth and the prints then taken from that; that it was a blue print, the same as a detail sheet. Witness further testified that nothing was ever said between him and Poole concerning the supervision of this work which would in any way change the provision of these specifications providing that "the

(Bill of Exceptions—Testimony of C. C. Overmire.)

design, construction and equipment of the floating dry dock is to be under the direct supervision of Frank E. Kirby or William T. Donnelly, or their authorized representative. The term 'supervising engineer,' when used in these specifications, shall be understood to mean Frank E. Kirby or William T. Donnelly, or their authorized representative"; that it was witness' understanding that these specifications covered the contract absolutely.

Witness further testified that it was problematical as to when the ships would arrive, but that he got notice of the passing of the ship by wireless and notified Poole, and while the steel was in transit Poole was ordered to have equipment there to receive the material on the docks when the ship arrived, and to start his erection; that the question as to when Poole would be ordered to commence work, or would not be ordered to commence work, was all governed by Donnelly; that witness had nothing to do with that; that witness told Poole that defendant company was governed strictly by the specifications and would expect him (Poole), as a sub-contractor, to be governed likewise.

Witness further testified that no understanding was ever entered into between him and Poole to the effect that he would not order Poole to begin work until such time as he could continually keep at work without delay, unless such understanding was in the specifications; that no such understanding was covered by the specifications, so far as witness knew;

(Bill of Exceptions—Testimony of C. C. Overmire.)

that witness never made any promise to Poole that he would not order him to begin work until he could continually keep at work; that no one else to witness' knowledge ever made any such promise to Poole on behalf of the defendant company.

Witness further testified that when plaintiff company received the shop details, Poole came up to witness' office with them; that witness had office copies of them, but had not examined them carefully; that Poole complained that the details showed considerably more detail work than he had contemplated and said something to the effect that he would expect to be reimbursed; that there were several complaints made after that about the amount of field work; that Poole wrote witness a letter stating that witness had told Poole that the material would be fabricated as was customary; that witness believed this letter was in evidence.

Witness further testified that no promise was ever made to Poole in regard to how the material would be fabricated; that at that time the steel was on the way; that witness did not at that time make any promise to Poole as to how the steel was going to come; that witness did not promise Poole or agree with Poole to reimburse him for fabricating in the field. Witness further testified that it would not have been in his power at that time to change the way in which the steel would come and was coming, so far as fabricating was concerned.

Witness further testified that defendant com-

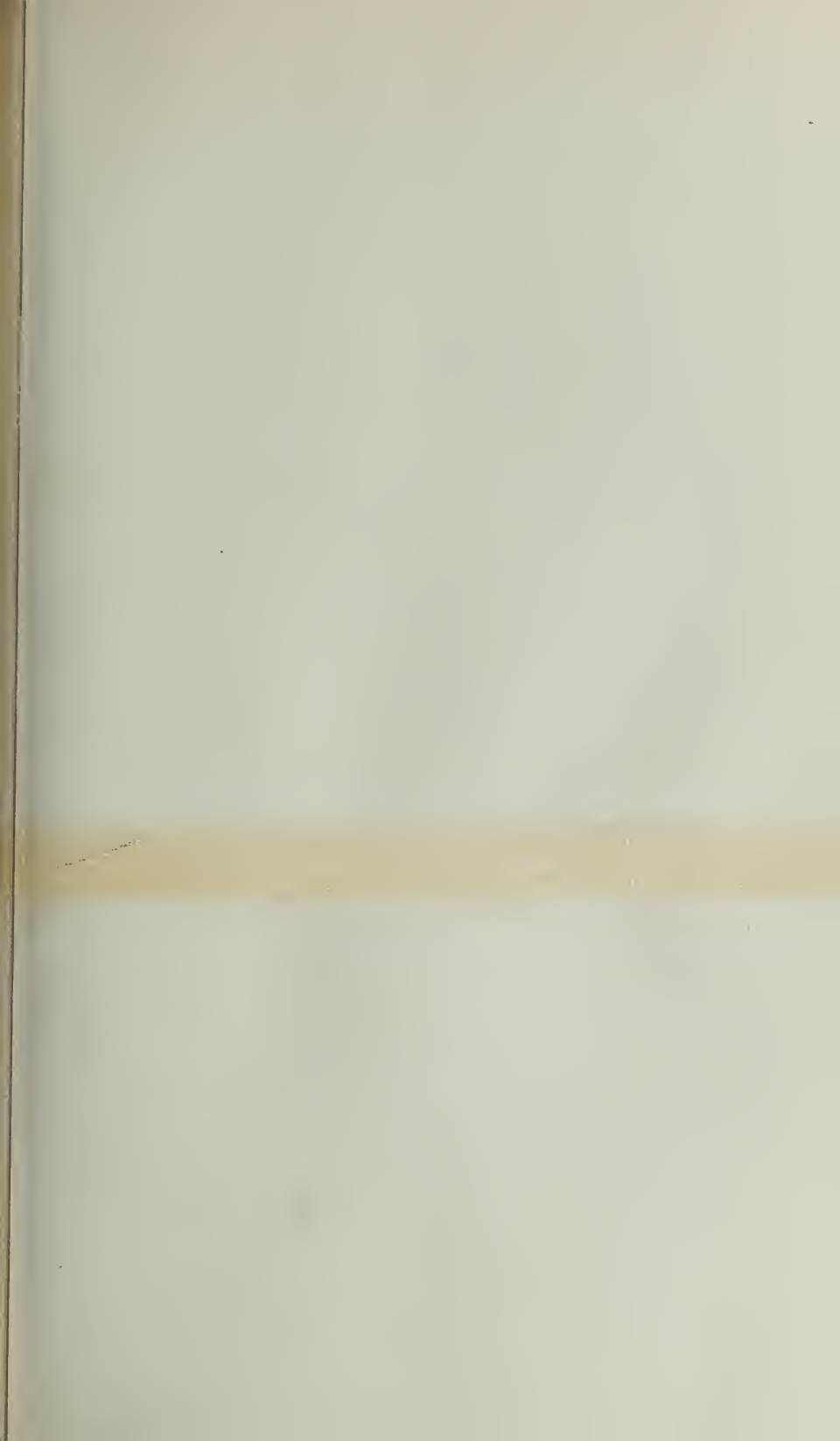
(Bill of Exceptions—Testimony of C. C. Overmire.)

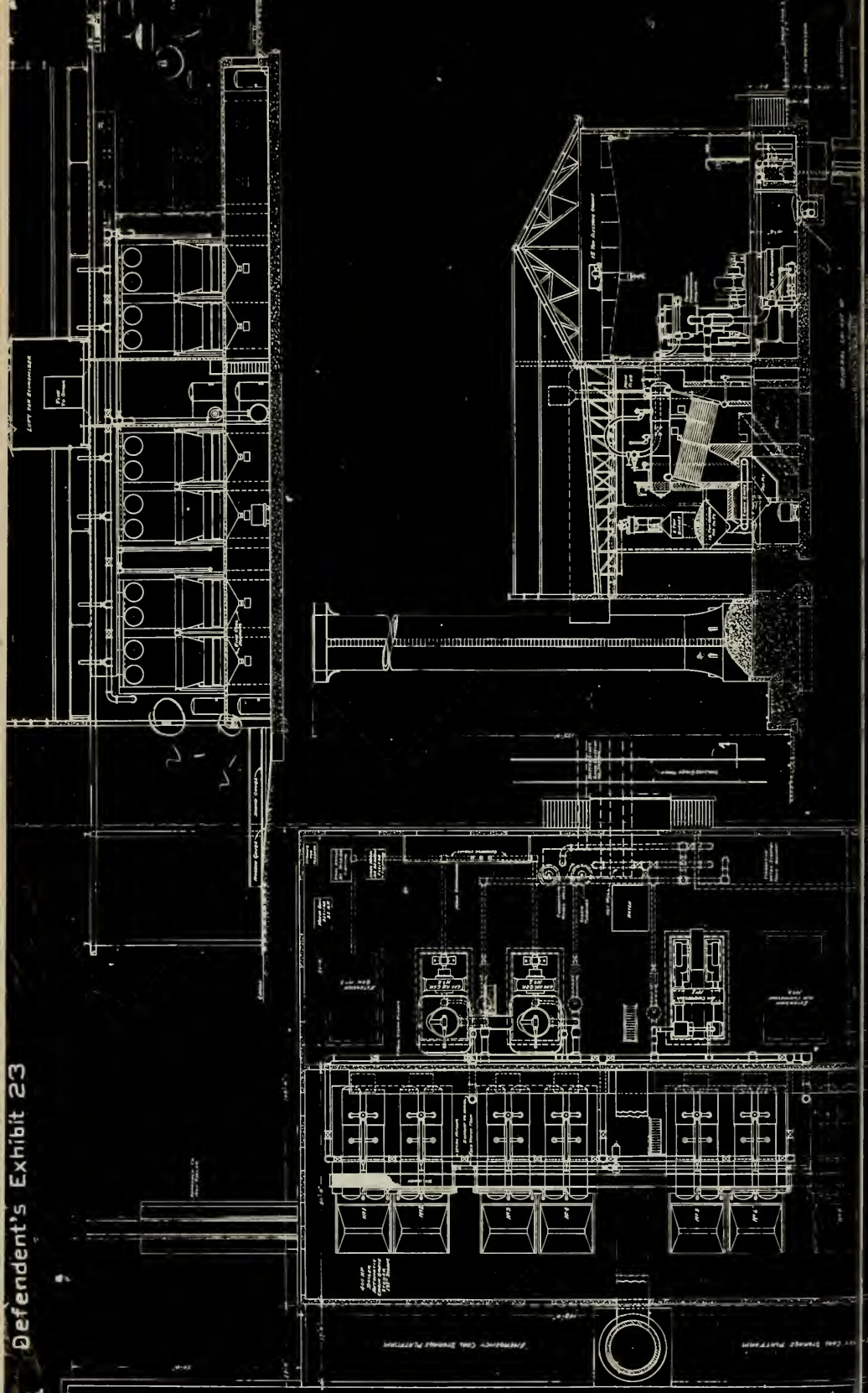
pany was an original contractor for the furnishing and erecting of the structural steel; that the contract was given to the defendant company by the Grand Trunk Pacific Railway; that defendant company was acting under the Grand Trunk Pacific Railway Company's engineer, Mr. Donnelly.

Witness further testified that he had nothing to do with furnishing the plaintiff company space for sorting and delivering the steel; that at the time he and Poole were at Prince Rupert the first time with Pillsbury, Pillsbury showed them a sketch, while they were out on the dock, of the proposed dock, and at that time Poole asked Pillsbury as to the capacity of the dock, and other questions as to the dock itself, and Pillsbury told Poole what the capacity of the dock was, and, witness believed, also told Poole that he could have sufficient space there in which to handle this steel and to do his work on the dock; that witness made no promises and said nothing to Poole as to witness furnishing Poole with space; that witness had nothing to do with the dock, and could not have furnished Poole with space if he had wanted to; that Pillsbury was the engineer in complete charge of the site; that several times subsequently Poole said he was short of space, and witness took it up with witness' representative at Prince Rupert and tried to arrange for more space for Poole. Witness further testified that he never requested Mr. Steele or Mr. Fey themselves to provide space; that he requested them to see Pillsbury

(Bill of Exceptions—Testimony of C. C. Overmire.)
and find out if he (Pillsbury) could arrange for more space with Poole.

Witness further testified that he was acquainted with the circumstances surrounding plaintiff company's claim for extra work amounting to Four Hundred dollars and seventy cents (\$400.70); that after the original plans and specifications for the dry dock had been prepared, Donnelly decided or had to increase the size of his compressor and pump house on top of the wings; that Donnelly instructed Pillsbury to order this work to be done; that defendant company furnished some little additional material for this work, and Pillsbury instructed plaintiff company what to do; that plaintiff company, as subcontractors under defendant company, notified witness that they would look to defendant company for payment, providing they did not obtain it from the Grand Trunk Pacific. Witness further testified that, upon taking the matter up with the Grand Trunk Pacific Railway, he found that the work had been performed and that plaintiff company's bill had been presented to the Grand Trunk Pacific Railway Company for payment and approved by them. Witness further testified that neither he nor his office had at any time ever paid plaintiff company's bill for this amount, or ever approved any bill for payment or given plaintiff company credit for it; that this amount was not included in defendant company's original contract with plaintiff company; that he could not recall whether he ordered





(Bill of Exceptions—Testimony of C. C. Overmire.)

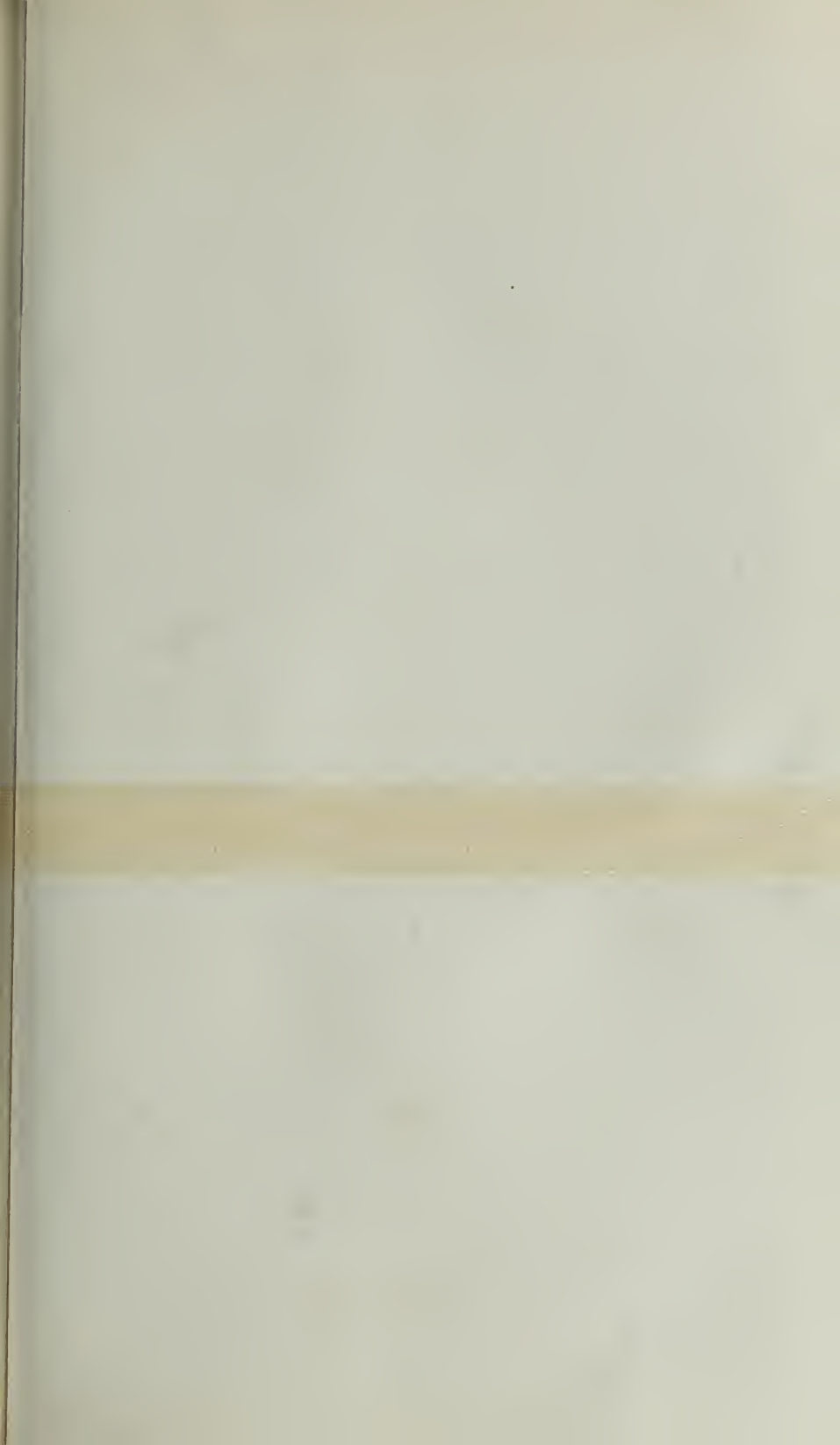
the work done, whether copies of the order went through his office, or whether the order for it was given direct by Pillsbury. Witness further testified that in any case, so far as giving the order was concerned, the original office would be Donnelly's office in New York; that Donnelly, and not defendant company, ordered the work done.

Witness further testified that defendant company never had anything to do with the preparation of the original plans prepared by Donnelly; that they were prepared entirely by Kirby and Donnelly.

Thereupon defendant, at the request of the Jury, offered in evidence a blue print plan, which was identified by the witness, received in evidence and marked "Defendant's Exhibit 23."

(Bill of Exceptions—Testimony of C. C. Overmire.)

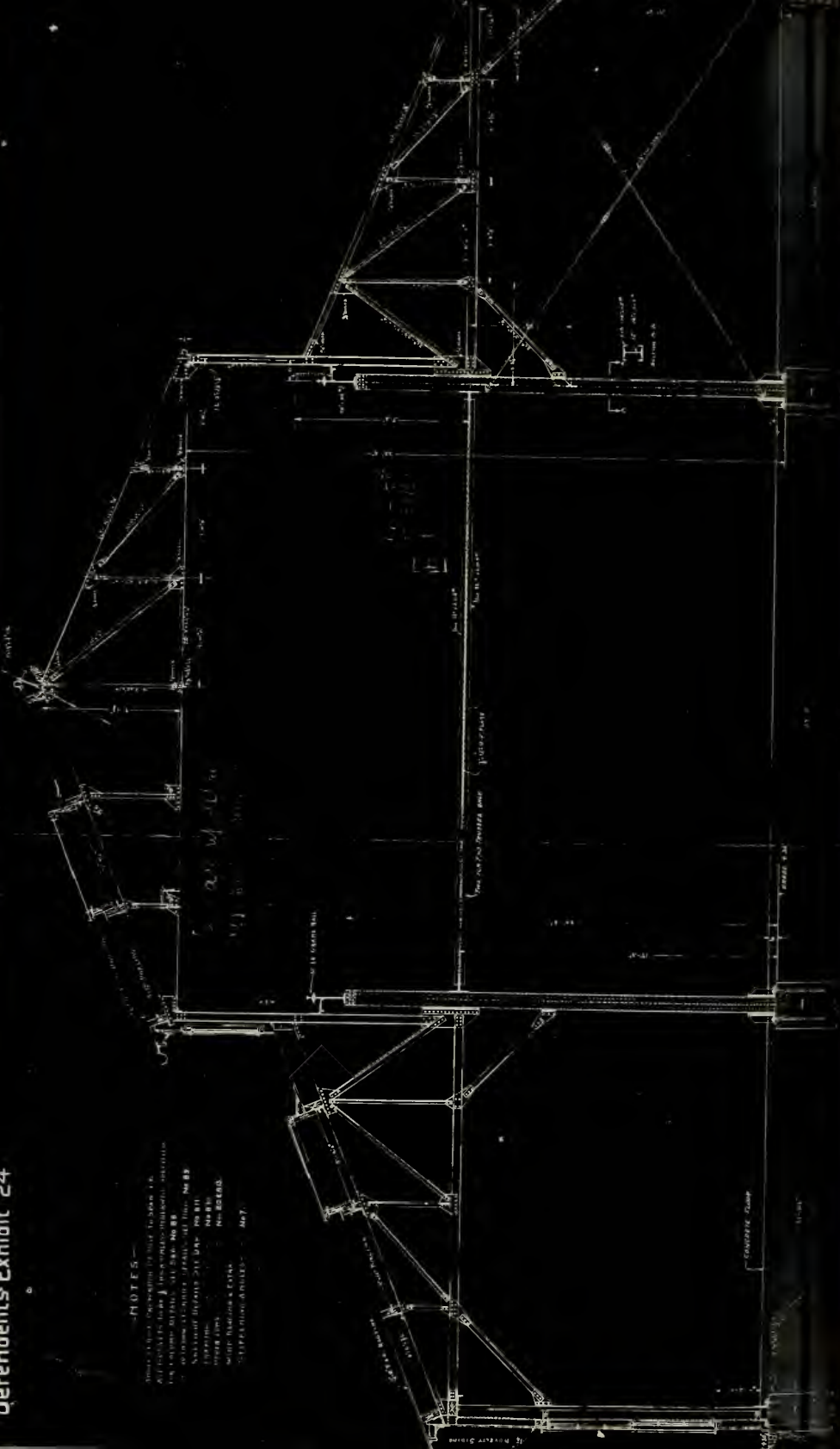
Witness further testified, referring to Defendant's Exhibit 23, that it showed a plan of the power house, a section through it, showing the trusses for which the details had already been introduced in evidence; that there was nothing shown on it at all to indicate how the material would be detailed; that there is not a rivet shown on the job; that it is simply a line sketch, showing the general construction; that the scale dimensions and columns shown on the plan are used by the draftsman as guides in making his details; that in the competition, which the defendant company would have against the Canadian Bridge Company, at Walkerville, Ontario, and the Dominion Bridge Company, at Montreal, defendant company would have to ship by rail to Vancouver, or by water out to the seaboard and then around the Horn, so that there were no explanatory notes on the plans showing how fabrication was to be done, but that the work was awarded to the lowest bidder upon the basis of the material erected in place at Prince Rupert. Witness further testified that there was only one general detail in the plans which showed the amount of fabrication required by the engineer; that the specifications said nothing about it, being just general; that there was nothing on the plans to indicate to anybody the amount of fabrication which the steel would receive; that where the person who prepared the plans goes into the matter of details, he sometimes just shows the amount of fabrication he requires.



Defendants-Exhibit 24

NOTES

1. ALL DIMENSIONS ARE IN FEET & INCHES.
 2. ALL DIMENSIONS ARE TO THE CENTER OF THE
 TRACKS UNLESS OTHERWISE SPECIFIED.
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(Bill of Exceptions—Testimony of C. C. Overmire.)

Thereupon defendant offered in evidence a blue
pint plan, which was identified by the witness, re-
ceived in evidence and marked "Defendant's Ex-
hibit 24."

(Bill of Exceptions—Testimony of C. C. Overmire.)

Witness further testified, referring to Defendant's Exhibit 24, that it showed the structural iron details for the machine shop and boiler and blacksmith shop, on the Prince Rupert dry dock, ship repair and ship building plant, Frank E. Kirby and William T. Donnelly, engineers; that this was the shop detail which he had just testified was one of the set which he and Poole saw in Pillsbury's office; that it was a typical detail which was followed on all the buildings; that the buildings were similar in general construction so far as trusses were concerned; that this detail design was intended to give an idea of what the construction would be.

Witness further testified that said Defendant's Exhibit 24 showed all the trusses to be shipped knocked-down, that in this detail, prepared by Donnelly, there is not a rivet driven; that it showed all knocked-down, and even went so far as to show all the gusset plates were knocked-down; that this detail was what defendant company was guided by; that he did not know how the steel would come, that question being up to the draftsman and to the engineer in approving defendant company's details. Witness further testified that the steel was not, in fact, shipped as indicated on said Defendant's Exhibit 24, but was shipped more completely fabricated than Donnelly's design called for; that as a general thing, it would save a lot of work in the field to have the steel more completely fabricated than the design called for, although there would

(Bill of Exceptions—Testimony of C. C. Overmire.)

have been some rivets which it would have been impossible to drive in the field, and would have to be driven in the shop after the members are assembled. Witness further testified that this detail (Defendant's Exhibit 24) was the only thing he had to go by; that Donnelly is one of the large engineers of the country, and that this detail was attached to his plans, marked "typical structural iron details," and Donnelly's own name was signed to it; that at the time that detail was prepared, Donnelly did not know how defendant company was going to ship the steel; that he knew it could not move in by rail, there being no railroad to Prince Rupert. Witness further testified that Donnelly was familiar with water shipment, having invented this floating dry dock, and shipped work to other countries, and that it was Donnelly's rule to ship it just as completely knocked-down as could be; that this detail (Defendant's Exhibit 24) was on the scale of one-half ($\frac{1}{2}$) inch to one (1) foot; that it was usual to show shop work or field work on some of the typical details drawn to such a scale; that he could not say whether the men who prepared the detail knew the steel was to be delivered before the railroad reached Prince Rupert; that there was quite an open space on the prairie at that time, and, as he recalled it, they were erecting at Prince Rupert when the first train came through.

Witness further testified that this original plan was used as a guide in preparing the details; that

(Bill of Exceptions—Testimony of C. C. Overmire.)

the details were not prepared wholly in accordance with the original plan, in that defendant company riveted on some of the gusset plates, which were shown on this detail (Defendant's Exhibit 24) not riveted; that in other respects this detail (Defendant's Exhibit 24) was controlling, together with the restrictions of the boat, as regards bulk and weight measure; that the defendant company built up as close as it could to the bulk measurement.

Witness further testified, in response to questions by a juror, that he submitted his bid on these plans; that he did not allow plaintiff company Eighteen Dollars (\$18) a ton out of his own figure to the railroad, but that Eighteen Dollars (\$18) a ton was plaintiff company's bid to him; that out of the difference between defendant company's price and the Eighteen Dollars (\$18) a ton must be deducted the cost of the mill material, the cost of transportation from the mill to the plant, the shop cost, and the transportation from the plant to the seaboard; that the structures were worth about between Ten (\$10) and Twelve Dollars (\$12) a ton to erect when completely fabricated, depending upon the location; that a great amount of steel, as shown by the detail (Defendant's Exhibit 24), had to be assembled in the shop, because there were joints with mill surfaces, that all of the plates had to be cut, all the details made, and all the holes punched; that so far as fabricating went, the only thing that was not done in the shop was assembling the punched steel on the

Bill of Exceptions—Testimony of C. C. Overmire.)
job and riveting it up; that there was more fabrication done than was called for, than was usual for water shipment.

Witness further testified, referring to Plaintiff's Exhibit "D," that it was shipped without the gusset plate on, and weighed with the gusset plate forty-five hundred (4500) pounds, equal to approximately two (2) bulk tons; that had the little plate been put on, defendant company would have paid freight for four (4) bulk tons, when the material weighed only about forty-six hundred (4600) pounds, owing to the cubical contents, which would require the payment of freight on more than eight (8) gross tons on material that did not weigh more than five thousand (5,000) pounds; that defendant company fabricated up to a point where the weight measure would come just inside the bulk measurement so that they would not have to pay on the bulk; that that is the reason why some of the details show riveting which had not been done in the shop; that some gusset plates, that were small enough to get in, were even fabricated, if they could be gotten in on the 'tween deck.

Witness further testified that, as indicated by the detail drawing (Defendant's Exhibit 24), the material could have been shipped just cut and punched, that that would have been shipping it knocked-down, but that the material which the defendant company shipped out was not shipped knocked-down; that it was shipped partially fabricated, all fabricated as far as it could be under the

(Bill of Exceptions—Testimony of C. C. Overmire.) conditions. Witness further testified that the figure of Eighteen Dollars (\$18) a ton was made by Poole; that Poole was with witness in Pillsbury's office, talked with witness on the ship going back, and made up his figure and gave it to the witness; that witness based his figure on Poole's estimate; that he based his figure as to furnishing the steel fabricated on these drawings; that this detail (Defendant's Exhibit 24) was the only typical drawing in them; that he expected plaintiff company to do the rest of the fabricating, not shown in the drawings, in the field.

Thereupon, in response to questions by the Court, witness further testified that he and Poole went to Pillsbury's office and saw the plans and specifications; that he did not know whether Poole's attention was called to this detail (Defendant's Exhibit 24), but that they were all lying on the drawing table when they went there; that he could not say whether Poole saw it; that the plans and specifications were all in Pillsbury's office, and that witness and Poole saw them, but that witness did not know what information Poole got from them; that they were there together, and Pillsbury had the whole set; that witness made his contract with Poole, that this steel would come shipped knocked-down, or in the manner in which defendant company ordinarily shipped steel by water; that it was not agreed at that time between witness and Poole that the steel should come as indicated on that detail (Defend-

(Bill of Exceptions—Testimony of C. C. Overmire.)

ant's Exhibit 24); that there was no conversation; that that detail (Defendant's Exhibit 24) simply shows what the engineers showed; that witness promised Poole that the material would come fabricated as was customary in this class of work if shipped by any of the three methods; that defendant company fabricates and ships more steel than all the plants in the United States put together; that witness said the steel would come as was customary, but did not mention defendant company's shop in particular; that witness told Poole that the steel would be shipped as customary by water transportation.

Witness further testified that he could not say whether there was any difference between the custom employed by the defendant company in shipping this kind of steel by water and the custom employed by any other steel maker; that the defendant company produced in the Bridge Department about one million (1,000,000) tons per year; that that approximate figure represents all the way from thirty-five (35%) to sixty per cent (60%) of the steel construction work produced in this country.

Witness further testified that he was not aware of any customs in shipping that kind of steel by water transportation which differed in any way from the way in which this steel was shipped; that the defendant company bid in competition on such material as this with the other large plants in the United States, and obtained contracts right along

(Bill of Exceptions—Testimony of C. C. Overmire.)

for it, so it must be shipped in the customary manner; that his opinion, as to whether or not this steel was shipped in the customary and usual manner for water shipment, was guided entirely by the advice of his engineering department that it was so shipped; that so far as witness' experience went, he would say that the manner in which this steel was shipped was entirely customary.

Witness further testified, referring to Plaintiff's Exhibit "D," that if the gusset plate were riveted on to the main member, it would project about twenty (20) inches beyond the member, which would be a dangerous procedure for shipping, especially where the material had to be transferred from the cars to the boats, and then from the boats to a wharf, and was loaded in the boat where defendant company had no control over the loading. Witness further testified, referring to said Plaintiff's Exhibit "D," that it showed conclusively that there was another member to come in, and that the holes showed the connection for that other member; that had the angle, which had previously been testified to having been shipped loose, been riveted in the shop, those rivets would have to be taken out in the field, because they go through that angle; that it could have been riveted on, but would have had to be cut off in the field; that the mere fact that the connection is left open on the drawing showed that a connection was coming in there, and the space in the holes showed that also; that if that angle had

(Bill of Exceptions—Testimony of C. C. Overmire.)

been riveted, it would have had to be taken off in the field. Witness further testified that the reason the plate was left off was on account of its being liable to damage, and also that the increase would make it necessary to pay freight on eight (8) tons instead of two (2) tons.

Witness further testified that neither he personally, nor his office in Portland, had had anything to do with making the price to the Grand Trunk Pacific Railway, except in so far as he wired in Poole's price; that his business was simply to ascertain from Poole what he would charge and wire it to New York; that Mr. Stratton in New York made up the price; that plaintiff company's figure was given to witness before he had any information as to the New York price, as he did not know what the water transportation rate was, nor the railway they were figuring on.

Witness further testified, in response to further questions by the Court, that at the time he got the price from plaintiff company, he did not have his contract with the Grand Trunk Pacific Railway Company; that he wired plaintiff company's price, which was added to defendant company's delivery price and named by Mr. Stratton to Mr. Guest, and that it was some time later that witness was notified that defendant company would be awarded the contract on the basis of water tight structures in place; that he had not made his contract with the railroad company prior to making a sub-contract

(Bill of Exceptions—Testimony of C. C. Overmire.)
with the plaintiff company; that defendant company did not bid with the railway company until they had received Poole's figure and incorporated that in defendant company's delivered price.

Witness further testified, concerning the allegations in the complaint that he promised Poole he would not order him to start work until such time as he could continuously keep at work, that there had been conversations along that line, but that every conversation has been confirmed in writing; that Poole made several complaints to him, which he immediately took up by wire or letter with Donnelly, advising Donnelly of Poole's contentions. Witness further testified that he never made any promises before the work commenced to plaintiff company that he would not order the commencement of the work until they could continuously keep at work without delay; that he did not recall ever having said anything to plaintiff company which would lead them to think that he had made such promises to them.

Witness further testified that the question as to how long it would be before the steel would be delivered was covered in the engineer's estimate, which he had and which Poole had access to, but that witness did not remember just what it was; that he thought that the stock shipment from Chicago was to start in something like three or four months, then the next shipment from Pittsburg was to be in about eight months, then the first delivery by water in

(Bill of Exceptions—Testimony of C. C. Overmire.)

about a year; that he did not recollect it, it was so long ago; that he was not to deliver the steel to Poole immediately, or anything of that kind.

Witness further testified that he never told Poole, or had any understanding with Poole, that when the steel did arrive, witness would not request him or order him to begin work until he would not be delayed; that that would be entirely for Donnelly to do. Witness further testified that he had no authority to order Poole to start or stop.

**(Cross Examination of C. C. Overmire
for Defendant)**

Upon cross examination, witness further testified that he and Poole went to Prince Rupert early in September, 1912; that at that time he and Poole went over the work, got in touch with Pillsbury, examined the site of the different buildings, and Poole made his estimate based upon the information he got there, and on his way to Seattle; that Poole's estimate was based upon Eighteen Dollars (\$18) a ton; that at that time witness did not know whether or not the steel was coming by rail to Vancouver, thence by car-ferry or barge to Prince Rupert, or by water around the Horn; that he did not wire any estimate as to what it would cost to furnish the steel, but simply as to what it would cost to erect it; that Stratton made the offer of what it would cost to furnish and erect the steel to the railroad, giving three different routes; that plaintiff

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(Bill of Exceptions—Testimony of C. C. Overmire.)

company's estimate of Eighteen Dollars (\$18) a ton for erecting was never changed after the first offer. Witness further testified, in connection with the testimony of Mr. Stratton concerning the revision of price under date of October 21, 1912, that witness did not know whether the figures were raised or lowered in revising them; that he had not copies of the original proposal by Mr. Stratton to the Grand Trunk Pacific, and had seen but one such proposal. Witness further testified that defendant company's price was subject to change in mill schedules without notice; that the determination to ship the steel by water, rather than by rail, had absolutely nothing to do with revising the prices, because Mr. Guest had the three propositions before him from the first; that if the steel had come by rail to Vancouver, cars would have been switched onto the car-ferry at Vancouver, taken to Prince Rupert, and hauled as close to the site as possible for unloading. Witness further testified that the steel would have come more nearly fabricated by that route than by all water route; that the steel was shipped from the mills at Ambridge, New Jersey, into New York City; that Ambridge was eighteen (18) miles from Pittsburg; that none of the steel came from Chicago that witness knew of; that the little derrick out on the end of pier three might have come from Chicago; that witness did not know where it come from.

Witness further testified that the steel came in three shipments, on the "Kentra," the "Buena Ven-

(Bill of Exceptions—Testimony of C. C. Overmire.)

tura," and the "Arna"; that if these boats did not at that time belong to the defendant company, they were under charter; that he knew the "Arna" was under charter, but did not know whether the "Kentra" and the "Buena Ventura" belonged to the defendant company or not; that he knew that the "Arna" did not belong to the defendant company. Witness further testified that he saw the "Kentra" and the "Buena Ventura," and that they were about four thousand (4,000) ton boats; that that would be a small boat; that the only measurement he had of the "Buena Ventura" was the depth of the hold; that he got the dimensions from the United States Register; that the "Buena Ventura," from the deck to the bottom of the keel, was twenty-seven (27) feet four (4) inches, and the "Kentra" was twenty-seven (27) feet two-tenths ($2/10$) of an inch, and the "Arna" twenty-seven (27) feet six (6) inches; that the "Buena Ventura" and the "Arna" had a 'tween deck and the "Kentra" had a spar deck, which answers the same purpose, a deck lower than the main deck.

Witness further testified that these boats base their freight rate charges on forty (40) cubic feet equal to one (1) ton; that if the forty (40) cubic feet are not used up, freight is paid by the weight measure; that if a truss only weighed five hundred (500) pounds but took up twenty (20) cubic feet, freight would be paid for twenty (20) cubic feet, or half ($1/2$) a ton; that if the truss put in there only

(Bill of Exceptions—Testimony of C. C. Overmire.)
weighed four hundred (400) pounds and took up forty (40) cubic feet, freight would be paid for one (1) ton, irrespective of the fact that it did not weigh one (1) ton.

Witness further testified that he had absolutely nothing to do with furnishing space to plaintiff company for unloading material; that he never made Poole a promise as regards space in Prince Rupert; that he transmitted every bill he got from Poole to defendant company's New York office for adjustment with Donnelly.

Thereupon plaintiff introduced in evidence a letter dated January 13, 1914, which was identified by the witness, received in evidence, and marked "Plaintiff's Exhibit S," which is as follows:

(Plaintiff's Exhibit S)

"UNITED STATES STEEL PRODUCTS COMPANY,
PACIFIC COAST DEPARTMENT.

Portland, Oregon, January 13, 1914.

Subject: Prince Rupert Work.

Mr. W. H. Stratton,

U. S. Steel Products Co.,

New York City.

Dear Sir:

Referring to conversations regarding the above subject while in New York, I have to advise that I have had several talks with Mr. Poole during the last few days regarding the difficulties that he is

(Bill of Exceptions—Plaintiff's Exhibit S.)

encountering at Prince Rupert and which are accounted for because of failure of the Railway Company to provide facilities and do certain work in accordance with their promises to us when we were at Prince Rupert on this work.

The dock is built in accordance with the original plan, but inasmuch as very little dredging has been done outside of the dock it is impossible for a ship to land except at the northwest corner of the dock, and all material from the ship must be handled with one boom at a time. This necessitates a large amount of extra work in order to move the material and keep the dock clear beneath this boom, resulting also in slow unloading of the ship.

The dock has been piled with coal, sand and lumber, so that it is difficult to find storage space for the material as it is unloaded.

It is difficult to find space in which to store the 400 tons which was on the "Buena Ventura," so that we are expecting a great deal of trouble in storing the 1500 tons which is on the "Kentra."

I have a bill from the Prince Rupert Stevedore Co. for handling material from the ship's slings in connection with the "Buena Ventura" in the amount of \$380.70. This bill will not be passed for payment, however, until some of the material which was lost overboard is recovered or replaced.

Poole has been able to complete the erection of the foundry building under difficulties.

The Railway Co. promised that the sites of

(Bill of Exceptions—Plaintiff's Exhibit S.)

these buildings would be completely filled to grade when erection should start, and that roadways would be provided for transporting material from dock to the building site.

The fill has not been completed under any building to grade, and it was necessary to put in cribbing and false work in order to erect the steel of the foundry building.

The foundations of the other buildings were pushed out of place by the fill, and the new foundations are now being put in, which is of course delaying our crews.

We were informed when at Prince Rupert that the material for the ship shed and dry dock could be unloaded upon the dock directly adjacent to the site where the material would be used. This is not possible at present, and the material will of necessity be transported some 2000 to 3000 feet.

About the only building upon which work can be done at present is the power house, and crews are at present upon work at this building.

None of the pontoons have as yet been constructed, although the Railway Co. is now receiving timber for this work, and piling it upon the dock, which is going to result in a greatly increased cost in our handling charges.

The above information is given you at this time upon representations to me by Mr. Poole, as being reasonable cause for charges for extras in connection with this work, as they were not contemplated

(Bill of Exceptions—Plaintiff's Exhibit S.)

by him in his figure, and are caused wholly by acts of the Railway Co. in not giving us the accommodation that was promised us at the site.

Mr. Poole is somewhat worried about storage space for the material which is on the "Kentra," and insists that I go to Prince Rupert with him Sunday night in an endeavor to have the Railway Co.'s representatives at Prince Rupert make arrangements whereby we can get our material on the dock in shape, so that it can be handled economically; and I am therefore sending a copy of this letter to Mr. DeForest, so that he may be advised as to the situation at Prince Rupert, and I will act in accordance with his advice.

So far the Portland office of the Poole-Dean Co. have not received any bills for extra work in connection with the work which has been done.

Mr. Poole seems very desirous of our satisfying ourselves as to the condition at Prince Rupert, as he feels that he is entitled to extra compensation because of the extra work, and he does not feel that we are in any way to blame for this extra work, inasmuch as I was present during all the conferences with the railway people and we are being handicapped because of acts of the Railway Co. which we are in no way responsible for, and which are in direct violation of their promises to Mr. Poole and myself.

I give you this advice at this time, so that you may present the matter to the Railway Co. if you

(Bill of Exceptions—Plaintiff's Exhibit S.)

deem advisable, but it occurs to me that if I do go to Prince Rupert it might be well for you to hold this matter in abeyance until you receive definite advice from me regarding conditions; after I have had the opportunity of looking the ground over for myself.

I will therefore wire you on the 16th or 17th instant whether or not I will leave for Prince Rupert on the 18th.

Very truly yours,

BRIDGE AND STRUCTURAL DEPARTMENT,

C. C. Overmire,

Contracting Manager.

CCO-C

Cy to A. T. DeForest,

E. J. Schneider."

Thereupon plaintiff introduced in evidence a letter dated March 6, 1914, which was identified by the witness, received in evidence and marked "Plaintiff's Exhibit T," which is as follows:

(Plaintiff's Exhibit T)

“UNITED STATES STEEL PRODUCTS COMPANY,
PACIFIC COAST DEPARTMENT.

Portland, Oregon, March 6, 1914.

Subject: Prince Rupert Work.

Mr. W. H. Stratton,

U. S. Steel Products Co.,

New York City.

Dear Sir :

I am in receipt of yours of February 28th, together with copy of Mr. Pilsbury's letter of the 17th, and after going over Mr. Pilsbury's letter I do not see that he has in any way contradicted very materially any of the statements I have made.

Referring to paragraphs 2, 3 and 4 of his letter will state that, on the occasion of Mr. Poole's and my first visit to Prince Rupert we were very careful to inform ourselves as to the condition that the docks and site would be in when the steel arrived.

Mr. Pilsbury acknowledges that the site was not in the shape which we contemplated, but as to the extra expense in handling this material I have previously informed you that the dock was filled with timbers and that there was no storage space on the dock for this steel. This steel had to be moved from the ship's side as unloaded and was stored where the pictures I have forwarded you show it as being stored. It was found impossible at the time the ship was unloaded to deliver this

(Bill of Exceptions—Plaintiff's Exhibit T.)

material to the buildings where it was intended to be used.

Our bid was based upon information by Mr. Pilsbury that the docks would be completed and could be used for unloading and storing material. Because of the fact that we could not store the material on the dock it could not be sorted as unloaded. This necessitated additional handling, which is the reason for the bill of extras as against the Buena Ventura.

As the steel is not yet on the site of the various buildings more handling will be necessary, which will cost the contractor as much as it would have cost them to have delivered direct from the ship to the building site.

A few hundred feet in the distance of transportation of material does not make very much difference in the cost, as the main item of the cost is the handling, that is to say—loading and unloading.

Referring to paragraph 5 of Mr. Pilsbury's letter, it is acknowledged that the cheapest way of transporting material from the Kentra to the ship's shed site was by scow. This does not alter the fact, however, that Mr. Poole and I were informed that the ship could unload at the ship shed site.

As to Mr. Pilsbury's comments regarding sorting, will state that we were paying \$50.00 a day for barges and scows, and as only four scows were available at Prince Rupert there was no time for

(Bill of Exceptions—Plaintiff's Exhibit T.)

sorting either on the scows or as discharging from the scows, as it was desired to unload this material with the greatest dispatch in order that the boat might not be delayed.

It would be considerably cheaper for this company to re-handle and sort material than to delay the ship by taking time to sort as the scows were being unloaded. As it was, we had to work double shift in order to unload the scows as fast as they could be loaded by the boat; inasmuch as they could load the scows from two or three of the hatches therefore we had no time whatever for sorting.

Had we unloaded the Kentra on the dock and hauled material the expense would have been unquestionably considerable more than the expense slips which have been turned in to me.

As I have previously informed you, the dry dock material is not as yet placed on the pier from which it will be erected.

Referring to the 7th paragraph of Mr. Pilsbury's letter regarding sinking of the piers, will state, that as the material came out of the Kentra it was more or less mixed, that is to say—we would get a hold of some of the ship shed's material and also some of the dry dock material. It was impossible to unload the ship shed material at the ship shed site and then tow the scow over to the pier upon which we expect ultimately to store the dry dock material for unloading this portion of the load.

(Bill of Exceptions—Plaintiff's Exhibit T.)

It was at this dock that we expected to unload direct from the ship all of the dry dock material.

Referring to Mr. Pilsbury's statements regarding his talks with Mr. Dean, will state that Mr. Poole and I discussed this situation very carefully before Mr. Dean went to Prince Rupert in the presence of Mr. Dean, and after visiting the site personally I feel that Mr. Dean has unloaded these boats in the cheapest possible manner, considering conditions at the site.

You will note that from the 10th paragraph of Mr. Pilsbury's letter that very good dispatch was obtained in unloading the Kentra, and I think that you will agree with me that this could not have been done had some of Mr. Pilsbury's other suggestions been followed out.

Referring to the 11th paragraph of his letter, there was no intention on my part in taking photographs from positions which showed advantageously to us, as the photographs which I had taken I think show pretty clearly the actual conditions on the dock.

Mr. Steele will investigate very carefully Poole-Dean's bill for extra labor over and above that contemplated by their proposal to me, and also the Pacific Stevedoring & Contracting Co.'s bill for extra labor over and above that contemplated by their contract.

With reference to your letter of March 2nd, I note Capt. Gibson's remarks, and wish to advise

(Bill of Exceptions—Plaintiff's Exhibit T.)

you that Poole-Dean did not go into this matter without thoroughly appreciating the situation, as Mr. Poole and I spent three days in Prince Rupert and went over this situation very carefully. In fact, we made our bid contingent upon the work being completed and the site being in a condition, as per information we received from the Grand Trunk Pacific's representatives, with whom we talked.

You may be assured that I will not pass for payment any bills for extra work which I do not believe are entirely just, and Poole-Dean shall not receive payment for any work as extra work which was originally contemplated by their bid.

I was with Mr. Poole when this bid was made up, and know exactly what was included in his bid, and shall therefore watch this matter very carefully.

Referring to Mr. Donnelly's letter of the 27th, I wish to advise you that I have not made any overstatement of conditions, as you have been presented with only facts which are corroborated by photographs I have sent you.

I remain,

Very sincerely yours,

BRIDGE AND STRUCTURAL DEPARTMENT,

C. C. Overmire,

Contracting Manager."

CCO-C

(Bill of Exceptions—Plaintiff's Exhibit U.)

Thereupon plaintiff introduced in evidence a letter dated July 20, 1914, which was identified by the witness, received in evidence and marked "Plaintiff's Exhibit U," which is as follows:

(Plaintiff's Exhibit U)

"UNITED STATES STEEL PRODUCTS COMPANY,
PACIFIC COAST DEPARTMENT.

Portland, Oregon, July 20, 1914.

Subject: Prince Rupert Terminal Buildings.

Mr. W. H. Stratton,

U. S. Steel Products Co.,

New York City.

Dear Sir:

Mr. Poole has just returned from a trip to Vancouver, and has reported to me upon the condition of the site at the present time.

When we met with Mr. Donnelly in Seattle some weeks ago he stated that Mr. Poole could begin riveting up the cross frames for the dry dock, and that the pontoons would be ready just as soon as Mr. Poole was ready.

Mr. Poole informs me that the crews are working on two of the pontoons, and that one of them will be ready for launching in about a month, and it is hard to tell when any more will follow.

From his talks with the man in charge of the work on the pontoons Mr. Poole estimates that it will be eight or nine months before the pontoons will be completed.

Bill of Exceptions—Plaintiff's Exhibit U.)

There is no foundation in as yet for the coal storage house, and they are just beginning foundations for the large shear leg.

Mr. Poole will finish up the work which he has under erection in about a month, and will then be obliged to withdraw his crews and wait until sufficient progress has been made to warrant him going to work again.

As to the riveting up of the cross-frames, there are about 48,000 rivets to drive and I estimate about two weeks' time would enable Mr. Poole to have the frames riveted up complete.

Mr. Poole is going to be put under considerable expense laying off crews and having his equipment tied up at Prince Rupert for the next six months, and as this is due wholly to non-deliverance of the sub-structures in proper condition to begin erection, I think it would be in order to notify the Railroad Co. that we shall expect an extra covering the cost of idle equipment and transportation of men because of the enforced layoff.

As to paint on the dry dock material, Mr. Poole looked this over very carefully and states that it is in very poor condition, and furthermore tells me that some of the material looks as if it had been lying exposed without paint for several years. Of course this is not the case, but the information he gives me simply shows the effect of the salt water on this material under the exposed conditions.

I think it would be well if this question of paint

(Bill of Exceptions—Plaintiff's Exhibit U.)

is up to us, for us to take immediate steps to re-paint the material, but this is going to be a very expensive operation, inasmuch as the material is piled up and of necessity all of the material will have to be re-handled.

I have had no reply to my recent letters to you regarding this subject, in which I asked you to inform me whether or not we should paint the material and if so to forward the paint and instructions as to how same should be applied.

Very truly yours,

BRIDGE AND STRUCTURAL DEPARTMENT,

C. C. Overmire,

CCO-C

Contracting Manager."

Thereupon plaintiff introduced in evidence a letter dated May 29th, 1914, which was identified by the witness, received in evidence and marked "Plaintiff's Exhibit V," which is as follows:

(Plaintiff's Exhibit V)

“UNITED STATES STEEL PRODUCTS COMPANY,
PACIFIC COAST DEPARTMENT.

Portland, Oregon, May 29, 1914.

Subject: Grand Trunk Pacific Terminal Bldgs.
Prince Rupert.

Mr. W. H. Stratton,
U. S. Steel Products Co.,
New York City.

Dear Sir:

I met Mr. Donnelly in Seattle last Monday morning, and stated plainly to him the condition of the site when Mr. Poole and I were in Prince Rupert to look over the site in anticipation of making a bid on the erection.

I stated to him the promises which were made to me by Mr. Pillsbury as to how we could expect to find the site when the steel should arrive.

Mr. Donnelly made some few comments upon the statements which were made by Mr. Poole and myself, and told me, as he told you and Mr. Edwards: ‘That anyone could have anything he had, but they had to take it away from him.’

I thought from this that there was no use in any further talk with Mr. Donnelly, and after chatting with him for a while, I left him with the plain statement of facts upon which we based our proposal.

Very truly yours,
BRIDGE AND STRUCTURAL DEPARTMENT,
CCO-C Contracting Manager.”

(Bill of Exceptions—Plaintiff's Exhibit W.)

Thereupon plaintiff introduced in evidence a letter dated September 24, 1914, which was identified by the witness, received in evidence and marked "Plaintiff's Exhibit W," which is as follows:

(Plaintiff's Exhibit W)

UNITED STATES STEEL PRODUCTS COMPANY,
PACIFIC COAST DEPARTMENT.

Portland, Oregon, September 24, 1914.

Subject: Prince Rupert Work.

Mr. W. H. Stratton,

U. S. Steel Products Co.,
New York City.

Dear Sir:

Referring to your letter of July 20th regarding extra handling on Prince Rupert work, will state that after going to Prince Rupert in company with Mr. Overmire and discussing the situation with Mr. Pillsbury, who advised that the dredging would be completed and any portion of the dock desired would be available for unloading and storing the steel until wanted for erection, Mr. Poole laid out his plans for handling the material as follows:

The foundry, machine shop, blacksmith shop and power house, which were to be shipped first, were to be unloaded onto the pier on which the shear leg derrick is to be erected, and allowed to lie there until needed at the building sites. Mr. Poole allowed in his estimate \$1.00 per ton for moving this

(Bill of Exceptions—Plaintiff's Exhibit W.)

material into position for erection. His intention was to erect the foundry building first, then move his equipment over and erect the machine shop and blacksmith shop, and then the power house; after which would follow the ship shed and dry dock.

Instead of the above procedure being followed, the only available space for the first vessel to berth was where the Buena Ventura and Kentra landed, and on account of the congested condition of the dock, the only place for unloading this material was at the points A, B, C and D as shown in the sketch accompanying my report on the unloading of the Buena Ventura and Kentra.

After this material was unloaded, Mr. Pillsbury instructed Mr. Dean to move it from the dock in order to make room for discharging the Kentra, which instructions Mr. Dean followed at once. This was done before the idea of using scows in connection with the Kentra had been conceived. Mr. Dean moved this material to the points shown on the sketch referred to. The machine and blacksmith shop sites were not at that time ready, so it was impossible to place the steel for these buildings in position for erection, nor could this be done in connection with the power house, as it would have been necessary to set up a derrick for this work. The only trestle across the unfilled space from the dock to the foundry site, was the one which carried the track shown in my sketch; so it was

(Bill of Exceptions—Plaintiff's Exhibit W.)

necessary for Mr. Dean to use this track for transporting the foundry building material from the dock.

On account of the fact that this track was in use for other purposes, he was not allowed to throw it over onto the building site and thus deliver the steel directly onto the site in one move. He absorbed the cost of handling the machine shop material on account of its proximity to the site after he had moved it; but he figured it would cost as much to handle the material for all the buildings, after the above moves, as it would have according to his original plans, on account of the fact that it costs very little more to move a piece of steel two hundred yards than twenty yards, as the handling is the principal cost; and what little was saved in distance was fully offset by his having to rehandle the machine shop material.

I therefore fully believe that the handling of the material for the foundry building, blacksmith shop and power house, is a proper charge against the Railroad Company, as this expense was certainly not contemplated by the original plans and was necessitated by conditions not being the same as outlined by Mr. Pillsbury.

In connection with the unloading of the Kentra and Arna, Mr. Overmire and Mr. Poole were given to understand that the boats bearing the ship shed material and the dry dock material could land in front of the launching platform or at the pier

Bill of Exceptions—Plaintiff's Exhibit W.)

where the shear leg derrick is to be erected, and discharge all of their material directly onto the dock. This program was followed out only in regard to 1038 tons of the material which was shipped on the Arna (which was handled at a cost of 64c per ton). As favorable weather conditions prevailed during the time the Kentra was being discharged, this work should have been done at the same price, had the berth at which the Arna rested been completely dredged out at the time the Kentra was unloaded. In this case the dry dock material which was shipped on the Kentra could have been placed where it now lies instead of having to be moved subsequently. At the time the Kentra was unloaded the condition of the dock was so congested that it was impossible to move the dry dock material to where it now lies. It therefore appears to us that the excess amount (over this 64c per ton) in unloading the Kentra, and 935 tons of the material on the Arna, together with the cost of moving the dry dock material from the ship shed site, is properly chargeable to the Railroad Company.

Trusting this gives you the information which you desire, we remain,

Very truly yours,

BRIDGE AND STRUCTURAL DEPARTMENT,

C. C. Overmire,

Contracting Manager.

By C. W. Steel,

Contracting Agent.

CWS-B"

(Bill of Exceptions—Plaintiff's Exhibit X.)

Thereupon plaintiff introduced in evidence a letter dated April 8, 1915, which was identified by witness, received in evidence and marked "Plaintiff's Exhibit X," which is as follows:

(Plaintiff's Exhibit X)

“UNITED STATES STEEL PRODUCTS COMPANY,
PACIFIC COAST DEPARTMENT.

Portland, April 8, 1915.

Mr. W. H. Stratton,
New York Office.

Dear Sir:

Referring to yours of April 2 and commenting on my telegram to you of September 6, 1912, wherein I referred to the present wharf and the filled roadways, will state that at the time I first went to Prince Rupert, Stirratt & Geotz were building the outer pier.

This wharf which I referred to as the 'present wharf,' is the wharf upon which all the material was discharged from our steamers with the exception, of course, of such material as was lightered over the side of the vessel.

This wharf at the time of my telegram of September 6 was sent, was about one-half finished. The contractors had started the wharf from the West end and were building East.

As you have been previously informed, filling behind the wharf had just commenced, and the sites

(Bill of Exceptions—Plaintiff's Exhibit X.)

of the building which are now completed was at that time under several feet of water.

Messrs. Poole, Pillsbury, and myself, stood on this piece of dock with a set of the plans, and Mr. Pillsbury pointed out from the plans the approximate location of the future buildings, and also explained more or less in detail as to when they expected the wharf to be finished and the fill completed.

I, at that time, took up with Mr. Pillsbury the capacity of the dock, in order that I might satisfy myself that all of the construction would be heavy enough to permit of the storage of the material as unloaded from the ships.

It seemed at that time that material would be delivered at Prince Rupert previous to the completion of the fill of the various building sites, and it was our idea that it would be necessary to leave the material on the dock as it was unloaded from the ship until such time as we could move it onto the building sites.

In this connection, I asked that our bid contain a clause that the owners were to supply fill roadways or trestles to the various building sites.

When you stop to consider that the entire area now covered by this plant was under water even at low tide, it must be apparent that our only thought was unloading the material at the docks and leaving it there until we could get on the sites of the various buildings to erect the material.

(Bill of Exceptions—Plaintiff's Exhibit X.)

Mr. Pillsbury informed us as to when he expected to complete the various docks, but could not give us definite information as to when the fill would be completed, and our entire conversation was along the lines of assuring ourselves that the dock would carry the material and that it could be left on the dock until needed.

Mr. Pillsbury pointed out to us the approximate location of the dock alongside of which the floating dry dock was to be moored and alongside of which it could be erected.

We discussed with him the possibilities of unloading and storing the material for the dry dock and the buildings near the dry dock on this pier and no objections whatever were raised. It is both Mr. Poole's and my recollection that in my conversation with Mr. Pillsbury it was distinctly understood that we were to have the use for unloading and storage purposes of the dock to suit our convenience.

Mr. Poole and I even went so far as to discuss with Mr. Pillsbury the possibilities of the building sites not being filled to grade and the necessity of putting in false work upon which to place our equipment while erecting the steel for the buildings so that I know that he did not know at that time just when the fill would be completed to grade.

It is most certain that with the experience Poole has had in erecting work that he would not gamble upon handling and erecting material on a site in a

Bill of Exceptions—Plaintiff's Exhibit X.)

condition such as was this site on the occasion of our first visit to Prince Rupert, and it was for the purpose of obligating the railroad to guaranty us condition upon which he could base a reasonable bid for the work, but we went into this matter of rocks and fill with Mr. Pillsbury in detail.

As soon as Mr. Fey gets back from Prince Rupert, he will gather together the data to submit you a statement as asked for in Mr. Donnelly's letter of March 16. I am very sorry to note that Mr. Pillsbury is attempting to shift the responsibility for this expense and make it appear as if we were willing to make a bid conditional upon certain work being performed by other contractors over which we had no control.

Very truly yours,

BRIDGE AND STRUCTURAL DEPARTMENT,

C. C. Overmire,

O-H

Contracting Manager."

Thereupon witness further testified, referring to the conversation that took place between himself and Pillsbury upon the occasion of witness' visit with Poole at Prince Rupert, that absolutely no agreement had been entered into between witness and Pillsbury in reference to the sites of the buildings and the space available for handling the material.

Witness thereupon was asked how he explained

(Bill of Exceptions—Testimony of C. C. Overmire.)
the inconsistent terms in his letter (Plaintiff's Exhibits "S", "T", "U", "V", "W" and "X"). To this question defendant objected on the ground that said letters, and everything which witness had said concerning the matter, contained merely representations made by the railway's engineers, but no agreement or promise in regard to the site, and because the form of the question would lead the jury to believe that there was an agreement.

Thereupon the Court overruled the objection, ruling that the jury would be the judges as to what constituted the agreement, and would have to take into consideration the correspondence between the parties about the matter and what was said and done between the parties. To this ruling of the Court the defendant thereupon excepted, and said exception was allowed.

Witness further testified, in response to the question previously asked, and in explanation of witness' expression in Plaintiff's Exhibit "X" to the effect that he had taken up with Pillsbury the capacity of the dock in order to satisfy himself that it would be heavy enough to permit of the storage of the material, that witness was figuring upon the basis of delivering the material on the dock and that if it were not a dock of sufficient capacity to sustain the load, there would be no place to unload. Witness further testified, referring to his statement in said Plaintiff's Exhibit "X", that he had asked that defendant company's

Bill of Exceptions—Testimony of C. C. Overmire.)

id contain a clause that the owners were to supply filled roadways or trestles to the various building sites, that the defendant company's bid would have to be on the same general terms as Poole's bid to defendant company; that Poole saw that there was no fill out to the docks, and that it was discussed between them there, that there would be no way of getting the material from the dock to the building sites; that when witness wired Poole's bid to New York, witness specified, as Poole requested him to do, that defendant company's bid stipulate for filled roadways or trestles to the various building sites.

Witness further testified that if defendant company did not get the contract, Poole would not have got the contract; that Poole was a sub-contractor under defendant company; that defendant company had a contract with the Grand Trunk Pacific to furnish and erect this work.

Witness further testified that he had no reason at all for going to Prince Rupert; that defendant company was bidding on this work and so far as they were concerned were going to deliver this material on the docks at Prince Rupert; that witness had been asked to furnish an erecting figure, and got hold of Poole and took him there; that if defendant company did not get the contract, Poole would not get it, and witness' only idea was to have Poole fully informed as to the conditions there at Prince Rupert so that no such thing as this would

(Bill of Exceptions—Testimony of C. C. Overmire.)

come up, so that Poole would know exactly what he was bidding on, and that the bid which witness expected from Poole and wired to New York, and which was incorporated by the defendant company in its proposal to the Grand Trunk Pacific, would cover all expense at the site after the steamers landed and discharged their material; that there was no occasion for the defendant company trying to cover up anything at all; that witness' idea was to get Poole fully informed, so that the bid would be correct. Witness further testified that he paid some bills for moving steel; that there was a move of the foundry building from the front end of the wharf, and they paid these bills to plaintiff company.

Witness further testified that there were a good many complaints made about the condition of the docks; that he went up to Prince Rupert to see about the matter; that he took it up with Pillsbury and the railroad company up there; that Poole had no contract with the railroad company; that Poole had his contract with the defendant company based upon representations made to Poole by the engineer of the railroad company.

Witness further testified that he made absolutely no representations to Poole at all; that he (witness) had nothing to do with the site; that defendant company took the contract under certain terms with the railroad company, and subcontracted to plaintiff company on the same terms.

(Bill of Exceptions—Testimony of C. C. Overmire.)

Witness further testified that Poole, and Dean through Poole, had made a great many representations to witness regarding the site, and Poole and witness went to Prince Rupert to see it; that witness saw the dock was badly congested, that on account of the track over the dock, it was impossible to move the material as Pillsbury had promised Poole he could move it; that witness went to a photographer there and asked him to go down and take the pictures, showing generally the site; that witness never went to the site with the photographer; that he asked the photographer to certify to the pictures; that he never saw the pictures until they arrived at his office; that then he sent them East so that Mr. Stratton could present the true position to Mr. Donnelly to substantiate Poole's claim through defendant company for extra work at the site.

Witness further testified that it was necessary for Poole to lay off his crew and stop work because the pontoons were not ready; that at the time Poole made his bid, Poole said that, on account of the international laws, he could not contract for labor in the United States, but would have to take his labor from Vancouver; that witness knew there were no mechanics at Prince Rupert of the kind needed. Witness further testified that the question as to when the work was to be begun on the pontoons, when three pontoons were floated, or two pontoons, was all in the specifications; that plain-

(Bill of Exceptions—Testimony of C. C. Overmire.)

tiff company was ordered to start erection when two pontoons were floated.

Witness further testified that his bid for the furnishing of steel and erecting the same was based upon the specifications of the engineer's plans; that neither in his sub-contract, or in his contract with the Grand Trunk Pacific, did he undertake to do all the work included in those specifications; that the first plans called for a steel stack, which was afterwards changed to a concrete one; that when Poole and witness went over the specifications, they called for a compressor delivering so many feet of free air per minute; that Poole did not have a compressor of that size and, when Poole made his bid to witness, he made it contingent upon the engineer's allowing him to use the compressor he already had; that the specifications called for some sort of patented English paint, about which Poole knew nothing, so that was eliminated from Poole's bid; that plaintiff company did not have to unload the steel from the boat and put it on the dock from the ship's tackle; that the steamship company made a contract with the stevedoring company to release material from the ship's slings. Witness further testified that he paid the stevedoring company for unloading the steel, because there was extra handling there on account of the docks not being ready; that they had to unload the ship onto barges, instead of onto the dock, which was not contemplated in the stevedoring company's

(Bill of Exceptions—Testimony of C. C. Overmire.)

bid to the steamship company, and therefore witness paid the extra cost of that.

Witness further testified that the original specifications provided that between the pontoon and where the caisson sets down on the pontoon, there was to be canvas belting, with tar; that Poole's written bid to witness did not mention that point; that as a matter of fact Poole's first bid covered painting of all the buildings, and the dry dock, and if defendant company had wanted to take advantage of him, they could have forced him to paint the dry dock too, that witness called Poole's attention to it and allowed him to make his bid according to his (Poole's) understanding; that there was no intention to take advantage of Poole and make him do anything that was not in the verbal agreement between Poole and witness; that the defendant company did not assume payment of this matter but had it done by the Grand Trunk Pacific at its own expense. Witness further testified that he did not know whether the specifications under the steel contract covered the furnishing of ballast.

Witness further testified that the dry dock consisted of three sections, the end sections containing three pontoons each, and the center section six pontoons.

Witness further testified, referring to the specifications (Defendant's Exhibit 20), that they provided that the steel erectors should test the dry dock, which was also eliminated from defendant

(Bill of Exceptions—Testimony of C. C. Overmire.)

company's bid; that defendant company did not follow the specifications literally.

Witness further testified that plaintiff company was delayed about two months, because of the fact that the pontoons were not ready for the dry dock; that he thought there was a letter in evidence in which he had instructed plaintiff company to proceed with the work upon the floating of two pontoons. Witness further testified, referring to said specifications (Defendant's Exhibit 20), that they provided for the erection of wings first on three pontoons, then on six pontoons; then on the remaining three pontoons; that the six pontoons were to be worked upon three at a time; that plaintiff company were instructed to go to work when two pontoons were launched instead of three.

Witness further testified that at the time plaintiff company's bid was put in, it was not definitely known how the steel was going to be shipped, although witness and Poole did know that it would undoubtedly come by water; that Poole never inquired of witness whether or not witness wanted two bids, one covering water shipment and the other rail shipment; that witness made no bid to the Grand Trunk Pacific, but simply wired in the erection offer; that he had nothing to do with the furnishing of the steel; that he did not know whether or not defendant company segregated the bid to the Grand Trunk Pacific, making it cover one amount for the furnishing of the steel, and the other for

(Bill of Exceptions—Testimony of C. C. Overmire.)

the erection. Witness further testified that he never told Poole that defendant company had made a profit of Twenty Dollars (\$20) per ton for the erecting of this steel; that Poole told witness that the engineer at Prince Rupert had told him (Poole) that, and that witness denied it; that witness denied it because he knew it was not a fact, having his engineering department's estimate.

Witness further testified, referring to the different blue print Exhibits that had been put in, that they showed field work done on them in the shop, considering that the material came by water; that he never put in a claim to plaintiff company for any riveting on account of the defendant company's having done some of the field work in the shop; that his bid specified what defendant company would furnish; that defendant company did not furnish more than they were required to with reference to the fabricating of the steel. Witness further testified that he and Poole went to Prince Rupert, got the plans, saw them in the engineer's office, went down to the dock, then got these plans and took them to the hotel, where they worked over them for hours; that they went over every detail; that the only detail sheet (Defendant's Exhibit 24) showed the steel absolutely knocked down.

Witness further testified that at that time he told Poole that defendant company would ship this material out as was customary; that Poole knew that it was shipped out as was customary for this

(Bill of Exceptions—Testimony of C. C. Overmire.)

class of material, and that the fabrication, as shown on that detail sheet (Defendant's Exhibit 24), was not customary with the defendant company, or with anyone else; that witness never claimed that the steel as shipped to Prince Rupert was fabricated a great deal more than was customary; that witness had heard the testimony to the effect that the steel was fabricated more than some of the experts would have naturally expected it to be; that witness had never put in any claim to plaintiff company for any rebate.

Witness further testified that the shear leg derrick was never ordered by the Grand Trunk Pacific Railway, but by the Camden Iron Works, of Camden, New Jersey.

Witness further testified that there was never any written contract between the defendant company and the Grand Trunk Pacific Railway Company; that he drew up a written contract for Poole and handed it to Poole, but never gave Poole a written contract; that Poole had asked the witness for a written contract, but that witness did not give him (Poole) one, because defendant company had its contract with the Grand Trunk passed on proposal and acceptance thereof, and so far as the erection was concerned defendant company's proposal was identical with Poole's proposal to defendant company, and defendant company gave Poole an acceptance of his proposal; that Poole's contract referred to the erection only, while defendant

(Bill of Exceptions—Testimony of C. C. Overmire.)

company's acceptance from the Grand Trunk Pacific covered the furnishing and erecting; that witness sub-let the erection to plaintiff company simply by a written acceptance of their proposal.

Witness further testified, in response to further questions by the Court, that the plans and specifications were drawn by the engineers of the railroad company, also the detail (Defendant's Exhibit 24); that the shop details were made out in the drafting room of the American Bridge Company, which is a subsidiary of the United States Steel Corporation, of which the defendant company is the selling agency; that these details are made out in the shops of the Bridge Company before any fabrication takes place; that the material is all cut, the holes punched and the material riveted up in accordance with these details; that these details are simply a guide for the workmen.

**(Redirect Examination of C. C. Overmire
for Defendant)**

Upon redirect examination, witness testified that plaintiff company's price of Eighteen Dollars (\$18) per ton was for the erection and riveting, hauling and painting, as covered in plaintiff company's bid; that after witness received this bid and put it with defendant company's bid to the Grand Trunk Pacific Company, it became a part of defendant company's bid. Witness further testified that plaintiff company, for this Eighteen Dollars

(Bill of Exceptions—Testimony of C. C. Overmire.)

(\$18) a ton, were to receive the material on the dock, haul, erect, rivet and paint, with the exception of the wings of the dry dock, all the structural steel, and turn the completed buildings over to the railroad so far as the structural steel work was concerned.

Witness further testified that only a few shop details have been put in evidence; that if all the shop details were gone through, it would be noticed that the most extraordinary details had been picked out; that the ones in evidence were not the average details by any means; that there are shipments made by rail which are not as completely fabricated as these shipments, and that there are also shipments by water which have none of this fabrication done; that the cost of Six Dollars (\$6) a ton, concerning which a juror had previously inquired, represented what witness thought would be the extra cost of fabricating at Prince Rupert over and above the probable cost of Twelve Dollars (\$12) for fabricating in the United States if shipped by rail.

Witness further testified that it was more expensive to the Bridge Company to ship material in this condition than to ship it more completely fabricated; that there are more packages to handle and more cost to the Bridge plant to ship the material in this way than if it were shipped by rail completely fabricated; that it entails more actual cost and labor than if it were shipped by car; that

(Bill of Exceptions—Testimony of C. C. Overmire.)

the reason the car shipment was not considered in this case was because of the saving in freight and the duty; that at the time the bid was made, there was no railroad to Vancouver; that defendant company was competing against two large Canadian firms who buy the material on this side of the line, there being no rolling mills up there who can furnish it, and who then pay ten per cent (10%) duty on the plain material into Canada; that defendant company had to pay the thirty-five per cent (35%) duty on fabricated material into Canada, and so had to overcome a twenty-five per cent (25%) cost on plain material at the mill; that the Canadian concerns had the same rail route that defendant company had, and the only way defendant company could make it up was by shipping it by water, which was done; that every job is considered separately in defendant company's plans, and that defendant company tries to detail and fabricate them so that the cost of erection, plus the cost of freight, is the minimum; that the reason defendant company shipped by vessel was in order to overcome the advantage which the Canadian concerns had because of their being able to import only the plain material, while defendant company had to export the fabricated material, between which there is a differential of twenty-five per cent (25%) in the duty.

Witness further testified that the ownership of the vessels had absolutely nothing to do with the

(Bill of Exceptions—Testimony of C. C. Overmire.)

fact of shipping the steel by water; that it would have been cheaper for defendant company to have made a charter if it could have found some tramp boat going into that country on which cargo could have been loaded; that with the small amount of tonnage that they had in this contract, it would have been cheaper to have chartered a ship than to have loaded the company's own bottoms. Witness further testified that if a ship of seven or eight thousand (7000-8000) tons capacity has a cargo, a rate can be made for that ship; that if it has to be run from Vancouver to the far north with only fifteen hundred (1500) or two thousand (2000) tons, there is no money in it at all; that it was the same thing as operating a train, whether the train consists of eight (8) cars or eighty (80) cars, it has to be operated, and it would be cheaper to get a rate and not to operate that train; that after the contract was taken, in order to get more tonnage, defendant company took a contract for rails for the Canadian Northern Railroad at Vancouver, and also from the Grand Trunk Pacific, and loaded those rails on the boat with the structural steel. Witness further testified that, as previously explained, this was the furthest north that a charter has ever been made in the world; that a charter could not be arranged to go up there, unless a pretty good sum of money could be guaranteed; that defendant company could not guarantee a cargo, so took their own boats.

(Bill of Exceptions—Testimony of C. C. Overmire.)

Witness further testified that a deck load can be arranged for with the steamship company, provided the hold is loaded in such a way it will permit it; that witness had never heard of a deck load being arranged for around the Horn, nor on a ship that is loaded with steel; that the reason for this was, that the boat would be out of ballast. Witness further testified that if a boat were loaded too high, it will of course go over; and if it were loaded entirely in the bottom and a wave hits the boat, the boat has to come back with the load, and if it is loaded too heavy, it will not come back, and the tendency of the next wave is to tip it over; that the proportion of bulk to load must be right.

Witness further testified, in response to a question from a juror as to how the deck load entered into this case, that there had been testimony that some trusses for local buildings, the High School and O.-W. R. & N. freight shed, had been shipped by water, but that the question as to whether or not it would come as a deck load had not been answered; that defendant company could not have shipped these trusses (assembled), unless they were shipped as a deck load, which, under the conditions, was impossible; that these trusses could have been shipped by putting them in the hold of the boat and laying them down without piling any material on top of them; that the trusses, which were shipped (assembled), were very narrow trusses, which could go in the 'tween deck; that

(Bill of Exceptions—Testimony of C. C. Overmire.)

sometimes long steel beams were shipped by deck load around the Horn; that the only way in which fifty (50) and sixty (60) foot beams could be gotten into Portland by water, before the Panama Canal was available, was by shipping them around the Horn on deck, lashed to the deck; that they were just plain I-beams, which could not be got in the hold; that some of the sailing vessels from Hamburg would have long lengths in them, but witness did not know how they got them in. Witness further testified that the strut for the ship shed (Plaintiff's Exhibit "F") was so shallow, only four (4) feet nine and five-eighths ($9\frac{5}{8}$) inches through, that it had a horizontal stiffness which would permit its being handled in almost any manner and loaded into the ship; that whereas the other trusses had such long members without bracing that they would buckle; that trusses of this kind (Plaintiff's Exhibit "F") could be handled all right up to that measurement, about five (5) feet thick; that it was about thirty-eight (38) feet eleven (11) inches long; that the flat trusses on the power house were of a different construction with all short members, a condition which did not obtain in the hip trusses, and it would be handled in the hold where the hip trusses could not; that these flat trusses came in two pieces, the wider piece being the shorter piece, and the narrower piece the longer piece.

(Bill of Exceptions—Testimony of C. W. Steele.)

Thereupon the defendant, to sustain the issues upon its part, called as a witness one CHARLES W. STEELE, who was duly sworn and testified as follows :

**(Direct Examination of Charles W. Steele
for Defendant)**

Witness testified that he was superintendent of the Columbia Engineering Works, residing in Portland; that he was at Prince Rupert, British Columbia, for a few months in the capacity of inspector of the American Bridge Company, to see that the material was properly unloaded, that the extra claims by the plaintiff company were just, and that the damaged material was straightened; that this was in March and April of 1914. Witness further testified that there was a misunderstanding between plaintiff company and defendant company in regard to the receiving of the material; that defendant company understood that plaintiff company were to receive the material at the ship's slings, whereas plaintiff company understood differently; that in order to settle the matter, defendant company conceded a point and stood the expense of taking the material from the ship's slings and placing it on the dock, so that it would be on the dock as called for in plaintiff company's contract with defendant company. Witness further testified that by the ship's slings, he meant a derrick which lifted the material out of the hold and

(Bill of Exceptions—Testimony of C. W. Steele.)

swings it over the sides of the ship where it is released on the dock; that it was necessary to move this material as fast as the ship's slings reached it, in order that there would be room for taking more material; that otherwise, if it were not removed, the space would soon be so congested that no more could be discharged.

Witness further testified that defendant company wanted a representative there while the material was being discharged; that it was impossible, on account of the absence of Mr. Fey in San Francisco and of Mr. Overmire in New York, at the time the first ships were unloaded for anybody to be there; that just as soon as Mr. Overmire returned from New York, he sent witness to Prince Rupert to check over the bills of plaintiff company and the stevedoring company; that witness checked them over for unloading the first two ships, and stayed there while the third ship was unloaded. Witness further testified that the first ship was the "Buena Ventura," the second ship the "Kentra," and the third ship the "Arna"; that he was there during the time the "Arna" discharged.

Witness further testified that he made arrangements, or assisted plaintiff company, with the Grand Trunk Pacific to get as much space as possible for storing the material on the dock; and after the material was discharged, he stayed there until all the damaged material had been straightened; that there was considerable material dam-

(Bill of Exceptions—Testimony of C. W. Steele.)

aged in transit from being improperly loaded, and some light members had heavy members on them; that it was entirely possible they struck very rough seas coming around the Horn; that considerable damaged material had to be straightened and put into condition so as to be acceptable to the engineers of the Grand Trunk Pacific Railway Company before it could be used; that this expense was chargeable to the steamship company, and that the defendant company paid plaintiff company for this work, and in turn charged it back to the transportation company.

Witness further testified that while at Prince Rupert, he at no time gave any instructions or orders to the plaintiff company as to where they were to store the material; that he assisted plaintiff company in every way possible to get storage space; that he took the matter up with Pillsbury and assisted plaintiff company in every way possible; that in one case, where Pillsbury did not remove a pile of gravel where the space was absolutely necessary, witness hired the work done, had the gravel removed, so that plaintiff company would have that storage space; that witness felt it was the duty of the defendant company to do everything they could to help out the plaintiff company, as they were together in the contract.

Witness further testified that he at no time had the least control over the space that was to be furnished on the site; that such space was all assigned

(Bill of Exceptions—Testimony of C. W. Steele.)

by the Grand Trunk Pacific Railway's engineer in charge, Pillsbury.

Witness further testified that he at no time made any promises or representations to plaintiff company as to reimbursing them for their lack of space. Witness further testified that when he was there, pontoons were under construction; that there were five pontoons under construction while he was there; that there were two built out in the open, and then, as he remembered, they started three under the ship shed; that the Grand Trunk Pacific Railway, under the direction of Mr. Crowell, was building these pontoons.

Witness further testified that he at no time made any promises to plaintiff company as to when these pontoons would be delivered; that that was something entirely beyond his jurisdiction.

Thereupon the defendant, to sustain the issues upon its part, recalled as a witness one FRANK EDWARD FEY, who having been already duly sworn, testified as follows:

**(Direct Examination of Frank Edward Fey,
Recalled for Defendant)**

Witness testified that he was by occupation a contracting agent; that the first time he went to Prince Rupert was in August, 1914, in connection with the space available for piling the frames of

(Bill of Exceptions—Testimony of Frank E. Fey.)

the wings for the pontoons, as Donnelly contended that Poole did not have to lay off his crew and quit work, but could go ahead and rivet up the frames of the dry dock; that it was witness' mission up there to ascertain whether or not space was available for Poole to proceed along these lines; that on August 14th, witness arrived at Prince Rupert and took the matter up with Pillsbury.

Witness further testified that he told Pillsbury what Donnelly had requested; that witness said to Pillsbury, "Where will we pile these frames now, if we go ahead and rivet them up"; that Pillsbury replied, "I don't know"; that witness said, "Mr. Donnelly is asking that the Poole-Dean Company proceed with this riveting of these frames, and I want to know where we are going to pile them"; that Pillsbury said, "Well, Mr. Donnelly is running this job. If he asked you to do that, it is up to you to go ahead and do it. I can't contradict his instructions." Witness further testified that when he used the word "we," he did not at all mean that the defendant company were going to rivet frames or pile frames, but that he meant the Poole-Dean Company; that defendant company's contract was with the Grand Trunk Pacific Railway Company, including erection; that ordinarily instructions would originate with Donnelly, would come through witness' office, and be transmitted to plaintiff company; that it was on behalf of the plaintiff

(Bill of Exceptions—Testimony of Frank E. Fey.)

company that witness went to Prince Rupert to see about this space.

Witness further testified that he at no time made any promises to plaintiff company as to the furnishing of space; that Poole knew, as well as witness, that the space and pontoons were absolutely under the control of Donnelly, and that defendant company could not give them space unless Donnelly would give it to the defendant company.

Witness further testified that he did not see any steel arrive; that none of the boats were unloaded while he was there; that he remembered Poole's coming to the office and taking the matter of fabrication up with Mr. Overmire; that that had nothing to do with witness' trip to Prince Rupert; that when witness went to Prince Rupert, Poole was not there, but Dean was in charge of the work for the plaintiff company; that Dean made no representations and had no conversation with the witness on the subject of fabrication.

Witness further testified that he made no promises to Dean as to reimbursing plaintiff company for its work in fabricating the steel, or anything of the kind.

Witness further testified, referring to Defendant's Exhibit 22, that he made that sketch, showing where the pontoons were being built by the Grand Trunk Pacific Railway, upon the occasion of his first visit to the site; that there were two pontoons under construction at that time out in the open; that the

(Bill of Exceptions—Testimony of Frank E. Fey.)

Grand Trunk Pacific expected to launch them in a little bay and then float them around to the dock. Witness further testified that he never made any promises or entered into any understanding with the plaintiff company as to the furnishing by the defendant company of any of these pontoons; that defendant company had no control whatever over the pontoons; that they were delivered by the Grand Trunk Pacific Railway, and were being built by them.

Witness further testified that he went to Prince Rupert the second time in 1915, leaving Portland on Easter Sunday; that the reason he went that time was to find out why plaintiff company was not proceeding with the erection of the wings of the dry dock as rapidly as Donnelly stated they should be operating; that witness went to Prince Rupert at the request of Mr. Overmire, whose request came from Mr. Stratton, whose request came from Donnelly. Witness further testified that he went to Prince Rupert and, after looking over the conditions and the number of riveters working on the wings in comparison with the amount of work that had already been done ahead of the riveters, it looked as though the riveters were lost; that he reported these conditions to Mr. Overmire, suggesting that more riveters be put on by the plaintiff company, which was done; that after witness got the riveters, the gangs were driving four thousand rivets per day, which was satisfactory to Donnelly, and that from

(Bill of Exceptions—Testimony of Frank E. Fey.)

then on the work was progressing to Donnelly's satisfaction; that witness expected at that time to remain in Prince Rupert only until this matter had been straightened out, but that Donnelly insisted that a representative of defendant company remain on the job until its completion, and consequently witness remained there during April, May, June and July, during 1915, until the work was completed; that Dean left the work two weeks after the witness, but that the work was all completed after witness left.

Witness further testified that while there he was acting as a representative of the defendant company, to see whether or not Donnelly's criticism as to the progress of the work were just; that witness got Dean to speed up his men and to put on more men; that the work after that went along satisfactorily for the consulting engineer.

Witness further testified that at no time did he ever have any control over the space that was allotted for sorting or handling the steel delivered from the ships; that Poole knew it; that Pillsbury, representing Donnelly, had control of this matter; that Pillsbury took his instructions from Donnelly; that, in other words, Donnelly was running that job.

Witness further testified that, after plaintiff company had started to assemble steel on the first three pontoons, the work progressed without any delay from then on and, as fast as plaintiff company would finish up one section, the pontoons would be

(Bill of Exceptions—Testimony of Frank E. Fey.)

available to continue upon the next section. Witness further testified that he was familiar with the details surrounding the claim of the plaintiff company for delay caused by failure to receive the pontoons in time; that plaintiff company did not want to start on these pontoons until they had three of them, and that three of them were not completed when the buildings had been erected and accepted.

Witness further testified that he was familiar with the circumstances surrounding plaintiff company's claim in this case for Four Hundred Dollars and Seventy cents (\$400.70) for extra work; that some little houses on top of the wings were to be extended and some extra material furnished, that there had to be extra work in the field connecting up the members constituting this extension; that the material, which had already been shipped, had not been punched and prepared for receiving these connections for the extension, which would naturally cause extra work for drilling the holes for receiving the extension; that these extensions were not contemplated or provided for in the original contract. Witness further testified that there was other extra work applying to shop and drafting room errors; that, in preparing details like these, draftsmen are liable to make a mistake and get some of the holes a little off, which requires drilling in the field, or the shop may make a little error; that these bills were all paid and approved by defendant company to the plaintiff company; that on any erection job, the

(Bill of Exceptions—Testimony of Frank E. Fey.)

erector expects to find little mistakes like that, which are customary, but the man having the contract for furnishing the steel assumes those bills and pays them as an error that will creep in in preparing the details or preparing work in the shop.

Witness further testified that this claim of Four Hundred Dollars and Seventy cents (\$400.70) had nothing to do with the items about which he had just testified, where the error occurred on the part of the defendant company, but was strictly a Grand Trunk Pacific requirement; that it was work which Donnelly ordered done, extra work of drilling holes and putting the extension on the little houses. Witness further testified that plaintiff company put in a claim to defendant company for this extra work; that the work was done while witness was in Prince Rupert, and time was kept on it, and the bills were made out and approved by the witness as to the labor on the work; that by approving bills, witness meant that he saw that the time and the rate were all right. Witness further testified that these bills were made out by Dean and presented to witness while witness was in Prince Rupert, that witness transmitted them to Mr. Overmire with witness' approval, and that Mr. Overmire in turn transmitted them to New York to charge against the Grand Trunk Pacific Railway or through Donnelly's office. Witness further testified that he told Poole that this work was work ordered by Donnelly, and should be paid for by the railway.

(Bill of Exceptions—Testimony of Frank E. Fey.)

Witness further testified that he at no time promised to pay Poole, or promised Poole that the defendant company would pay him, for this work; that witness did not know whether the bill heading showed that plaintiff company rendered the bill against defendant company, or whether it was just made out without any heading; that the bills were all made out and presented to witness by Dean in Prince Rupert; that after witness returned to Portland, he asked Dean to present his bills direct to the Grand Trunk Pacific, in other words, to send them to Pillsbury, and let him approve them, and then send them on to Donnelly, which Poole did.

Witness further testified that the reason he asked Poole to present his bills direct to the Grand Trunk Pacific was because defendant company had paid Poole for all of defendant company's extra work, and this was something ordered by Donnelly.

(Cross Examination of Frank Edward Fey, Recalled for Defendant)

On cross examination, witness testified that when he went to Prince Rupert, work had not been started on the dry dock; that the time, when the crews looked lost on the dry dock, was on witness' second trip; that witness went up to Prince Rupert because Donnelly was not satisfied with the progress being made on the erection of the steel; that Donnelly had made threats to defendant company of turning the plant over to the British Army and of

(Bill of Exceptions—Testimony of Frank E. Fey.)

doing the work himself, and of keeping plaintiff company's employes off the plant; that witness went up and got Dean to put on extra crews to hurry up the work; that the work was completed ahead of time.

Witness further testified that he was up at Prince Rupert just between boats on the first trip, and four months on the second trip; that on the second trip, the job was practically all cleaned up; that Mr. Steele was up there two months; that Mr. Overmire went up a couple of times, and Mr. Steele went up on or two times besides; that there was an item in the specifications (Defendant's Exhibit 20) concerning having a representative of the defendant company up there to look after their interests; that in that particular instance, defendant company did not comply with the specifications; that defendant company thought it could take care of its interests by sending a man up once in awhile to see, so long as there was not any controversy; that they could get along that way.

Thereupon defendant rested its case.

Thereupon, in rebuttal, plaintiff recalled as a witness one OTHO POOLE, who, having been duly sworn, testified as follows:

**(Direct Examination of Otho Poole,
Recalled in Rebuttal for Plaintiff)**

Witness testified that there was no charge made in this case for fabricating the steel in the dry dock; that it came as witness expected it would come; that there was only one way in which it could be shipped, and that was knocked-down. Witness further testified, referring to the photographs in evidence (Defendant's Exhibits A, B and C), that they showed steel about the same as the steel that was shown at Prince Rupert, plates and channels and things like that. Witness further testified that the wings of the dry dock were approximately fifteen (15) feet wide at the bottom and could not be shipped fabricated on a car; that the short sections of the dry dock were about one hundred and thirty-three (133) feet long, on three (3) pontoons. Witness further testified, referring again to the said photographs (Defendant's Exhibits A, B and C), that they seemed to show all sorts of space afforded the contractor in which to sort the material; that he did not have anything like that space for laying out the material at Prince Rupert; that that was all he had asked for, room to lay the material out as shown in said photographs; that in said photographs it looked as if the steel had been sorted out.

Witness further testified, referring to Defendant's Exhibit 19, that it showed a general outline of the truss after assembling, and an end view of one of the small buildings; that he could not tell from an examination at all how many rivets would be

(Bill of Exceptions—Testimony of Otho Poole.)

driven in the shop and how many in the field; that the drawing did not even show the space between rivets; that no shop man could take that plan and build a truss from it; that the size of the bottom chords were not even given; that the columns did not show any rivets; that there was nothing shown, except an outline of what the truss would look like after the truss was assembled; that it did not show how many sections the truss would come in; that he never saw that plan.

**(Cross Examination of Otho Poole, Recalled
in Rebuttal for Plaintiff)**

On cross examination, witness testified that in building up the wings of a dry dock in sections, the plates are riveted on the frames; that the wings could not have been prepared in sections; that they were one hundred and thirty-three (133) feet long and thirty-five (35) feet high; that it was cut into several parts, but that the way the plates and things break, it would not have been practical to rivet any of them together; that the frames stood up thirty-five (35) feet high, and then the plates went on, fastened on to each of the frames; that the channels, to which the plates were riveted, came in one length; punched and sent out to be put together in the field; that the channels were all in one piece, approximately thirty-five (35) feet long.

Witness further testified that the pieces which were fastened to the channels could not have been

(Bill of Exceptions—Testimony of Otho Poole.)

riveted together in the shop, that they were too long, fifteen (15) feet long; that after the frame work is got together, it is about ten (10) feet wide at the top and fifteen (15) feet wide at the bottom, one side straight up and down, that when the frame is got together it would be approximately thirty-five (35) feet long, ten (10) feet wide at the top and fifteen (15) feet wide at the bottom; that it would be too big to ship if it were riveted up; that if all the angles had been cut in two and some riveting done, it could have been done in the shop; that these photographs only showed stuff that would go in a dry dock.

Witness further testified that before he put in his bid, he saw the engineer's general plans.

Witness further testified, in response to questions by the Court, that the steel was to be delivered on the dock to him, and that an argument came up about that; that when the ship arrived, he got a wire that on board dock meant ship's slings; that he refused to touch the material, and that defendant company paid for handling it; that the stuff was to be delivered to him on the dock; that the ships were to get it there and unload it, and that at that time he did not know whether the stuff would get in two (2) or three (3) months before he would get on the job, or how it would be there; that he supposed that the material would be delivered to him, would be left on the dock when the ship went in and discharged it, and that he could go in and

(Bill of Exceptions—Testimony of Otho Poole.)

take it from there; that defendant company paid him for taking the material from the ship's side and landing it on the dock, also for moving it again to make room for some other cargo. Witness further testified that he was supposed to take the stuff and erect, to have one handling on it; that if he had had room enough to spread the stuff out when he was handling it, he would have had only one handling of it; he would have sorted it out and could have taken it out, but instead of having room to sort it out, the plates were all piled up, in making the first handling from the ship, as the stuff came off the ship. Witness further testified that defendant company paid him for taking the material from the ship's slings; that he could not distribute the steel so he could pick it up and handle it advantageously, because there was not enough space; there was hardly room enough to land the stuff off the boat; that there were lumber, gravel and concrete piles, and everything else on the dock; that the only space he could get was any space that could be found that was left; that, according to his contract, it was defendant company's duty to land the stuff on the dock for him, with plenty of space so that when he came there he could handle it to advantage.

**(Redirect Examination of Otho Poole,
Recalled in Rebuttal for Plaintiff)**

Upon redirect examination, witness testified, referring to Defendant's Exhibit 14, that it showed

(Bill of Exceptions—Testimony of Otho Poole.)

the members coming knocked-down; that no charge was made for fabricating them, because they had to be shipped knocked-down.

Thereupon plaintiff rested its case, and this concluded the testimony in the case.

Thereupon defendant moved the Court to instruct the jury to return a verdict for defendant, which motion the Court overruled, and to this ruling of the Court the defendant excepted, and the exception was allowed.

Thereupon defendant moved the Court to instruct the jury to return a verdict for the defendant upon the first alleged breach of contract and cause of action, which motion the Court overruled, and to this ruling of the Court the defendant excepted, and the exception was allowed.

Thereupon defendant moved the Court to instruct the jury to return a verdict for the defendant upon the second alleged breach of contract and cause of action, which motion the Court overruled, and to this ruling of the Court the defendant excepted, and the exception was allowed.

Thereupon defendant moved the Court to instruct the jury to return a verdict for the defendant upon the third alleged breach of contract and cause of action, which motion the Court overruled,

(Bill of Except'ns—Instruct'ns Requested by Def't.)
and to this ruling of the Court the defendant excepted, and the exception was allowed.

Thereupon the defendant moved the Court to instruct the jury to return a verdict for the defendant upon the fourth alleged breach of contract and cause of action, which motion the Court overruled, and to this ruling of the Court the defendant excepted, and the exception was allowed.

Thereupon, before the jury retired, defendant requested the Court to charge the jury as follows:

(Instructions Requested by Defendant)

I.

This controversy grows out of an agreement between defendant and the Grand Trunk Pacific Railway in which defendant agreed to furnish all structural steel for the erection of certain buildings for said Railway at Prince Rupert, British Columbia, and to erect said steel all according to certain plans and specifications in writing. These plans and specifications thereby became a part of the defendant's contract. The defendant reserved the right to sublet the erection of the steel and did sublet this part of its contract to the plaintiff. Thereby the contract between the plaintiff and defendant became in all respects subject to the plans and specifications according to which the original contract between the defendant and the Railway Company was awarded and the plaintiff is conclusively presumed to know

(Bill of Except'ns—Instruct'ns Requested by Def't.)

and is bound by everything contained in the plans and specifications which relate to the erection of the steel.

II.

There are four distinct causes of action joined by plaintiff in this case (although five are stated in the complaint), growing out of four alleged breaches of contract on the part of defendant. First (numbered I in the complaint) plaintiff alleges that defendant agreed to deliver the steel completely fabricated, but failed to do so, and later agreed to have plaintiff charge defendant for the necessary fabrication, but failed to pay such charge. This alleged breach of the contract, set forth in the first cause of action does relate to the steel delivered for the dry dock. It is admitted that the steel for the dry dock was fabricated according to the contract. This first cause of action, therefore, in which plaintiff claims damages in the sum of \$3330.69 is limited to the fabrication of the steel for the foundry, coal storage, blacksmith, boiler and machine shop building and the ship shed. The second alleged breach of contract is set forth in the complaint in the two causes of action numbered therein II and III. These two causes of action should be considered together, as they are claims for damages for alleged delays on the part of the defendant in furnishing pontoons for the dry dock upon which the steel was to be erected. For these alleged delays plaintiff claims

(Bill of Except'ns—Instruct'ns Requested by Def't.) damages in the sum of \$2123.64 as the rental value of its plant for the period extending from September 1, 1914, to November 4, 1914, and also claims damages in the sum of \$918.00 for moneys which it claims it was compelled to expend in paying transportation for employees to and from Vancouver, B. C. There is no claim that the steel for all the buildings, except the dry dock, was not furnished in time. The next alleged breach of the contract contained in the cause of action numbered IV in the complaint is that the defendant agreed to furnish storage space for the steel for the dry dock, but failed to do so. This cause of action, therefore, is limited to the steel for the dry dock and it is admitted that the plaintiff has no complaint for lack of space furnished for the steel for all other buildings. The cause of action numbered V in the complaint is based not upon the original contract but upon the new contract not covered by the original contract at all. In this the plaintiff claims that the defendant ordered some work done, which the plaintiff did; that this work amounted to the sum of \$400.70 and that the defendant has refused to pay for the same.

III.

There is no question between the parties that the pontoons upon which the dry dock were to be erected should be furnished by the Grand Trunk Pacific Railway and not by the defendant, and the defend-

(Bill of Except'ns—Instruct'ns Requested by Def't.)

ant owed to the plaintiff no duty to furnish such pontoons at any particular time, but only when the same were furnished to it, the defendant, by the Grand Trunk Pacific Railway. The evidence shows, without contradiction, that any delay in furnishing the pontoons was not due to the defendant but to the Grand Trunk Pacific Railway Company. I therefore charge you that the plaintiff cannot recover for the alleged delays in furnishing the pontoons and your verdict upon the second and third causes of action must, therefore, be for the defendant.

IV.

In regard to the fabrication of the steel for the buildings other than the dry dock, I charge you that the parties did agree that the steel for these buildings should be fabricated by the defendant at the shops; that is to say, should be assembled and riveted together at the shops to the same extent to which similar steel for similar work when transported by ship is ordinarily or usually fabricated; that is to say, usually assembled and riveted. This is a question of fact to be determined by you upon the evidence submitted. The burden of proof upon this question is upon the plaintiff.

V.

A letter from the plaintiff to the defendant dated November 7, 1913, and the answer to the same dated November 11, 1913, both of which are in evidence

(Bill of Except'ns—Instruct'ns Requested by Def't.)
define the extent to which the steel should be fabricated, assembled and riveted. I charge you, therefore, that it was the duty of the defendant to fabricate, assemble and rivet steel to the same extent to which similar steel for use in similar buildings is usually fabricated, assembled and riveted when the same is to be transported by ship for export. Whether the steel was so fabricated, assembled and riveted is a question of fact which you will determine from the evidence. You will understand, however, that there is no question between the parties that the steel for the dry dock was fabricated, assembled and riveted in all respects as required by the contract between the parties.

VI.

The contract between the parties provides that the steel shall be delivered on the dock. It does not provide that any space should be furnished by the defendant for storing, assorting, or handling the steel. The plaintiff was under the contract to receive steel on the dock and to do all things necessary after it was received to erect the building according to the plans and specifications. This included the handling and assorting of the steel wherever necessary. I charge you, therefore, that there was no obligation on the part of the defendant to furnish space for this purpose and that you will, therefore, find a verdict for the defendant upon the fourth cause of action.

(Bill of Except'ns—Instruct'ns Requested by Def't.)

VII.

The fourth cause of action, as I have stated, grows out of a new and independent contract. It is admitted that the plaintiff did the work and that the value of this work was \$400.70. It is contended on the part of the defendant that the orders to do this work were issued by the Grand Trunk Pacific Railway and were merely transmitted by the defendant to the plaintiff. If you find from the evidence that this work was ordered by the Grand Trunk Pacific Railway and the orders merely transmitted to the plaintiff by the defendant, then the defendant will not be liable to plaintiff for the value of this work. This is a question of fact to be determined by you from the evidence and the burden of proving that the work was performed for the defendant is upon the plaintiff.

VIII.

In regard to the extra work for which the plaintiff claims \$400.70, the defendant alleges in its answer that plaintiff presented a claim for this work in said sum to the Grand Trunk Pacific Railway Company, that the claim was allowed by the Grand Trunk Pacific Railway Company and that the defendant was indebted to the Grand Trunk Pacific Railway Company in a sum exceeding \$400.70 and the amount of this bill was allowed to the plaintiff as a credit upon its indebtedness to the Grand

(Bill of Except'ns—Instruct'ns Requested by Def't.)
Trunk Pacific Railway Company. If you find from the evidence that the plaintiff did present a claim for this sum to the Grand Trunk Pacific Railway Company and this claim was allowed, that at the time that it was allowed the plaintiff was indebted to the Grand Trunk Pacific Railway Company in a sum exceeding \$400.70 and that this sum was allowed to the plaintiff as a credit upon such indebtedness, then I charge you that the plaintiff has received compensation for this extra work in this sum and that it cannot recover from the defendant.

IX.

You are instructed that it was the duty of the Railway, and not of defendant, to furnish pontoons for the dry dock wings, and that plaintiff was not bound to begin erection work on said wings until three pontoons had been furnished plaintiff by the Railway. You are also instructed that plaintiff was bound to do all its work upon said wings under the direct supervision of the Railway and was bound to carry out the instructions of the Railway concerning such work. Defendant had no right to give instructions or to exercise supervision over such work except as and when acting on behalf of the Railway. Therefore, if you find that plaintiff was delayed in erecting said wings by lack of sufficient pontoons, or if you find that plaintiff was instructed to begin erecting said wings before three pontoons had been

(Bill of Except'ns—Instruct'ns Requested by Def't.)

furnished to plaintiff, in either case your finding will not show any breach of legal duty on the part of defendant, and your verdict upon the second alleged breach of contract and cause of action must be for defendant.

Thereupon the Court refused to give the instructions requested by the defendant, or any of them, and to the Court's refusal to give said instructions, and to the Court's refusal to give each of them, the defendant then and there excepted, and the exceptions were allowed.

Thereupon the Court charged the jury as follows:

(Instructions Given by the Court)

"Gentlemen of the Jury:

The Court will instruct you touching the law of the case for your guidance when you come to deliberate upon your verdict, which will be based upon the evidence that has been adduced at the trial of this cause.

This is an action by Poole-Dean Company, which is a corporation, against the United States Steel Products Company, which is also a corporation.

Before proceeding to the issues in the case, there are certain preliminary matters that I will allude to for your guidance.

(Bill of Exceptions—Instructions Given by Court.)

In the first place, the Grand Trunk Pacific Railway Company let a contract to the United States Steel Products Company for the furnishing of the steel and materials with which to construct these certain buildings which have been spoken of; and under that contract, the United States Steel Products Company was to fabricate the steel on the ground as it came from the mill and to erect the steel into the buildings. This contract was let under certain plans and specifications, which had been drawn up by the Grand Trunk Pacific Railway Company, and of course the United States Steel Products Company was to be governed and controlled in the erection of these buildings, or the performance of its contract, by those plans and specifications.

Subsequently, as you have heard here detailed, the United States Steel Products Company sublet to the plaintiff, Poole-Dean Company, the fabrication of this steel on the ground, whatever was to be done about it in that line, and the erection of these buildings by putting the steel in place. That is about the contract, as I understand it, or the sub-contract. And of course reference at the time was made to these plans and specifications which had been drawn by the Grand Trunk Pacific Railway Company, and, so far as it pertained to the work that Poole-Dean Company undertook to do, those plans and specifications were to control the operation of the work of Poole-Dean Company, as

(Bill of Exceptions—Instructions Given by Court.)

well as the work of the defendant company under its contract from the Grand Trunk Pacific Railway Company.

Now then, with that in view, the plaintiff here has alleged that it (Poole-Dean Company) entered into this contract, or the sub-contract, with the defendant company, and has set out four specific causes of action, all of which have relation to the one contract. That is to say, under the theory of the plaintiff, the plaintiff made one contract with the defendant company, and that one contract is set out, I might say by piecemeal, in the first, second, third, and fourth causes of action. So when you look to the contract, the statement of it by the plaintiff is comprised in the four causes of action. I want to get that plain before you so that you may determine what the contract is in the end.

Now, there are certain parts of that alleged contract that are contained in writing. I have reference to the letter of November 7, 1913, which was written by the Poole-Dean Company, through Otho Poole, to the United States Steel Products Company. That letter sets out that, "It is our understanding we are to erect, rivet and paint two coats on main buildings for \$18.00 per ton of 2000 pounds; on wings of dry dock we are to erect, rivet and calk for \$18.00 per ton of 2000 pounds, all material to be delivered to us on dock at building site." That is the principal part of the letter. That letter was answered by a letter from the Bridge

(Bill of Exceptions—Instructions Given by Court.)

and Structural Department of the defendant company, through C. C. Overmire, Contracting Manager, wherein he states: "Your understanding is, in accordance with ours that: you are to haul, erect and rivet the steel for the buildings, for \$18.00 per net ton of 2000 pounds, which includes your furnishing and applying two coats of paint, as per specifications; also that you are to haul, erect, rivet and calk the steel work for the wings of the dry dock, for \$18.00 per net ton of 2000 pounds."

Those letters are a part of the contract, but they do not include the whole contract which it is alleged that the parties entered into between themselves. Nor is there any writing, that I remember of, other than these, in the evidence, from which the Court can conclude that the entire contract is in writing. If the Court could so conclude, it would be the duty of the Court to construe the contract, and not for you. But, as it is not entirely in writing, then it becomes the duty of the jury, or the province of the jury, to determine what the contract is; not alone from the writings, but from the verbal evidence that has been offered to you upon the stand. So that, in order to determine what the real contract was between these parties, or the agreement as to the fabrication on the ground and the erection of this steel, you must take into consideration, not only these two letters that I have read from, but other letters that may bear upon the subject, and all the verbal testimony given by

(Bill of Exceptions—Instructions Given by Court.)

the parties and by those persons whom they have called to corroborate them, and determine from the whole what the contract is.

I will say to you further, gentlemen of the jury, that the plaintiff in this case has the burden of proof in establishing the contract as it has been alleged by it; that is to say, it must establish the contract by a preponderance of the evidence given in the case. And I may say now that what we mean by preponderance of the evidence is that the plaintiff must produce such an amount of evidence as will carry the scales of justice down upon its side. If the scales stand exactly at balance, it has not produced a preponderance of the evidence. If they go down upon its side, then plaintiff will prevail. If they go down upon the other side, then of course plaintiff cannot prevail in this case.

Now, another item that I will refer to is that it appears by the testimony in the case that the fabrication and erection of the steel in the dry dock is not concerned in this case, because it is admitted by the plaintiff that that steel came and was delivered upon the ground as fully fabricated as the plaintiff expected it to be fabricated. So that the matter concerning the erection and the delivery of the steel fabricated, as designed by one party or the other, relates to the buildings other than the dry dock.

Now, I will go more specifically into what the

(Bill of Exceptions—Instructions Given by Court.)

issues of the case are, so as to direct your attention to what must be determined in the end.

It is alleged by the plaintiff that on or about September, 1912, plaintiff and defendant entered into a contract whereby plaintiff agreed to furnish labor and equipment to erect and paint the structural steel to be used in the machine-shop, boiler-shop, power-house, and other bulidings of the Grand Trunk Pacific Railway Company at Prince Rupert, British Columbia, at an agreed price of \$18 per ton, said steel to be fabricated at the factory and delivered to plaintiff for erection. To be more specific, it is further alleged that it was understood that the steel should be completely fabricated when delivered to plaintiff, but that if fabrication was necessary other than for the erection of the steel, plaintiff should be allowed a reasonable amount for such extra work. Then it is further alleged that it was later discovered that the steel shipped would not be received completely fabricated; whereupon plaintiff notified defendant that plaintiff would charge for extra work required in fabricating said steel, and defendant promised and agreed that the matter would be satisfactorily adjusted between them. Then it is alleged further that plaintiff fabricated and assembled the steel for the coal storage building at an actual and reasonable expense of \$166.95; for the ship shed at the reasonable expense of \$1896.16; for the blacksmith shop at the expense of \$579; for the power-house \$207.39; and

(Bill of Exceptions—Instructions Given by Court.)

for the foundry building \$481.14; aggregating \$3330.69.

Now, these are the allegations of the plaintiff as to the first cause of action.

Answering this cause of action the defendant, after setting out that the Grand Trunk Pacific Railway Company had let to the defendant the contract for furnishing materials and construction of certain buildings at Prince Rupert, alleges that plaintiff submitted to defendant written proposals for the performance of a part of said contract, which proposals were accepted in writing, and that said proposals and acceptance do now constitute the contract between plaintiff and defendant mentioned in the complaint. Then it is alleged that the contract was, namely, that plaintiff was to haul, erect and rivet steel for the main buildings at Prince Rupert, to furnish and apply thereto two coats of paint as per specifications, and to haul, erect, rivet, and calk the steel work for the wing of the dry dock, and the defendant was to deliver all steel work to plaintiff on dock at Prince Rupert, and to pay plaintiff \$18 per ton for the work of riveting and erection. It is then further alleged that said contract was entered into between the parties upon the express understanding that defendant should deliver said steel to plaintiff by water transportation, as completely fabricated as it was the defendant's custom to ship by water transportation similar steel for similar work, that said steel was

(Bill of Exceptions—Instructions Given by Court.)

by defendant so delivered on the dock at Prince Rupert, and that defendant has complied in all respects with its obligation.

Thus are set forth the contentions and the issues of the parties as it respects the first cause of action.

It will be noted that the parties are in practical accord as it respects the agreement for riveting and erecting the steel at the price of \$18 per ton. The essential difference between them relates to the manner and the state of completion as it respects fabrication in which it was agreed that the steel should be delivered to the plaintiff. As you will see, the plaintiff contends that the agreement was that the steel should be delivered completely fabricated, and that if extra work was necessary plaintiff would be allowed a reasonable amount for the extra work of fabrication. On the other hand, the defendant contends that it was the understanding that said steel should be fabricated as defendant was accustomed to fabricate steel that was designed to be shipped by water transportation, and that said steel was so fabricated and delivered to the plaintiff.

The plain and simple issue, then, is, as it pertains to this first cause of action, whether the agreement was as the plaintiff states it or as the defendant states it.

The agreement, whatever it was, was concluded between Mr. Poole, acting for the Poole-Dean Company, and Mr. Overmire, acting for the United

(Bill of Exceptions—Instructions Given by Court.)

States Steel Products Company, and they are the principal witnesses speaking to the negotiations leading up to the agreement. Other witnesses have been called pro and con, and have lent corroboration to the one side or the other, but the principal factors in the negotiations and the final consummation of the agreement are these two men.

Much evidence has been directed towards the manner and the degree of completeness in which the steel was fabricated at the shop. It is the theory of the defendant that this depends upon whether it was designed that the steel should be transported by rail or by water; if by rail, that it would be more completely fabricated than if it were designed to be carried by water transportation; but in any event, that the steel would not be wholly fabricated at the shop, and there would always be left a certain amount of fabrication to be done in the field. The plaintiff combats this theory to a certain extent, and claims that the steel should have been more completely fabricated than it was fabricated and delivered upon the ground.

You have listened to a great amount of testimony on this subject, and the detail drawings which have been exhibited for your enlightenment show pretty clearly the extent of the fabrication at the shop, and to what extent the material was fabricated when transported and delivered to the plaintiff. I need not go more fully into the evidence on this subject, as you will remember what it is. But

(Bill of Exceptions—Instructions Given by Court.)

in the end you must determine what the agreement of the parties was as it pertained to the amount of fabrication that should be done, or should have been done, before the delivery of the steel to the plaintiff.

To repeat, plaintiff says in its complaint that the steel was to be completely fabricated, and that, if extra work was necessary other than such fabrication as was required for erection, plaintiff would be allowed a reasonable amount for such extra work; and plaintiff further says that, when it was ascertained that the steel would not be delivered completely fabricated, defendant was notified that plaintiff would make a charge for the extra work in fabrication, and that thereupon defendant, through its agent Overmire, promised and agreed that the matter would be satisfactorily adjusted, and instructed plaintiff to proceed with the work. On the other hand, defendant says that it was understood that the steel was to be delivered to plaintiff as completely fabricated only as it was defendant's custom to fabricate the same when to be carried to the place of delivery by water transportation, and as similar steel for similar work was fabricated.

If the agreement was as plaintiff states it, bearing in mind that plaintiff must establish the agreement as it has alleged it to be by a preponderance of the evidence, then the plaintiff must prevail, and your verdict will be accordingly on that count. But

(Bill of Exceptions—Instructions Given by Court.)

if the agreement was as defendant contends, then your verdict will be for the defendant.

This as it pertains to the first cause of action. If you find for the plaintiff on this cause, you will find in amount what such extra services in fabrication were reasonably worth. The plaintiff would be entitled in such event to the reasonable value of the extra services only.

Now, the second cause of action as set out by the amended complaint repeats the contract as to the erection of the steel at the agreed price of \$18 per ton, and then it goes on to allege: "The erecting to begin when three pontoons had been floated in said dry docks and that at the time such contract was entered into plaintiff and defendant went over the ground and it was understood and agreed that defendant would not order plaintiff to begin work on the job until such time as plaintiff could, when starting the building, for said Grand Trunk Pacific Company, continuously keep at the work until the completion of the job and that in the event that there were any delays to plaintiff in said work the defendant would reimburse plaintiff for such delays, and it was further understood and agreed that defendant would furnish plaintiff with adequate space for the purpose of assorting and handling the structural steel when it was unloaded on the dock of the Grand Trunk Pacific Company; that plaintiff was thereafter instructed by defendant to commence work and plaintiff did commence work upon

(Bill of Exceptions—Instructions Given by Court.)

the buildings and completed the same before three pontoons of the dry docks had been floated, and because of the premature instructions of the defendant and the delays in the completing of said pontoons, plaintiff's equipment was compelled to lie idle and remain in disuse for a period of time extending from September 1st, 1914, to November 5th, 1914, and that the reasonable rental of said equipment for said period of time was \$2123.64."

Now, the second cause of action is based upon that last allegation, that the plaintiff's equipment was compelled to lie idle, and that by reason of that fact the plaintiff was entitled to the reasonable rental of the equipment.

If you should find for the plaintiff upon that cause of action, the measure of damage would not be the reasonable rental of the equipment, but it would be the lawful interest upon the value of the equipment during the time that the equipment was compelled to lie idle.

Now, the third cause of action repeats what I have read to you practically, but the cause for relief is based upon the allegation that, "because of the premature instructions of the defendant and the delays in the completing of said pontoons, plaintiff's equipment was compelled to lie idle and remain in disuse for a period of time extending from September 1st, 1914, to November 5th, 1914, making it necessary for plaintiff to return the laborers who were employed upon the work at Prince Rupert,

(Bill of Exceptions—Instructions Given by Court.)

British Columbia, to Vancouver, British Columbia, and pay the railroad expenses and wages of said men while in transit to Vancouver, British Columbia, at a cost of \$918." So that that cause is based upon the alleged fact that the plaintiff was compelled to transport these men to and fro by reason of the delay caused by the alleged action of the defendant company.

In the fourth cause of action it is alleged that defendant would reimburse plaintiff for such delays, and "it was further understood and agreed that defendant would furnish plaintiff with adequate space for the purpose of assorting and handling the structural steel when it was unloaded on the dock of the Grand Trunk Pacific Company." And for that the plaintiff claims that it is entitled to recover the sum of \$2459.

Now, to these three causes of action, the second, third, and fourth, the defendant interposes a defense to this effect: That "said specifications provided, and said contract between plaintiff and defendant was made with the express understanding, that the construction operations on said main buildings and wing of dry dock should at all times be under the full control and management of the Grand Trunk Pacific Railway and its officers and agents." And it is further alleged that, "It was mutually understood and agreed by and between plaintiff and defendant at the time said contract between plaintiff and defendant was entered into, and said

(Bill of Exceptions—Instructions Given by Court.)

contract between plaintiff and defendant was made with the express understanding, that the pontoons for the wing of the dry dock should be furnished and provided by Grand Trunk Pacific Railway and not by defendant, and said pontoons are the pontoons mentioned in plaintiff's said amended complaint; and it was mutually understood and agreed by and between plaintiff and defendant at the time said contract between plaintiff and defendant was entered into, and said contract between plaintiff and defendant was made with the express understanding, that space for storing, assorting, and handling said steel on the dock of Grand Trunk Pacific Railway at Prince Rupert, British Columbia, should be furnished and provided by Grand Trunk Pacific Railway, and not by defendant."

So the defense, then, to these three causes of action is based upon the alleged fact that the plaintiff, and that it was so understood by and between the plaintiff and defendant, should look to the Grand Trunk Pacific Railway Company for these rights and privileges, and that it was not to look to the defendant company; that is to say, that the plaintiff was to look to the Grand Trunk Pacific Railway Company for the furnishing of this space that is complained about, and for the time of the beginning of the work, and for the other things that are alleged in these three causes of action, and not to the defendant company. This, of course, is based upon the fact that the Grand Trunk Pacific

(Bill of Exceptions—Instructions Given by Court.)

Railway Company was making these improvements, and that the contract of the defendant company was made with the Grand Trunk Pacific Railway Company to furnish the materials and to erect the steel in the buildings.

And I might say this, in this relation, however: That if it had been the defendant company who was erecting this steel into the buildings, it might be inquired whether or not it was not the duty of the Grand Trunk Pacific Railway Company to furnish adequate space for handling the steel. If that was the case, then the inquiry may be extended—a sub-contract having been let to the plaintiff company to erect this steel and put it into the buildings, whether or not the defendant company did not assume the obligation that would have rested upon the Grand Trunk Pacific Railway Company in the first instance of providing adequate space for the carrying on of the work in riveting this steel and in putting it into the buildings. I submit that, gentlemen of the jury, for your consideration, along with the alleged contract and the denials thereof, for determination as to whose duty it was to furnish space—whether or not that was a duty devolving upon the defendant company, or whether or not the plaintiff was to look to the Railway Company alone for furnishing that space, and not to the defendant.

Now, there was one other cause of action, which is simply that the plaintiff, at the request of the

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defendant, did certain extra work which is set out in the complaint, amounting to \$400.70. It is claimed by the defendant company that that work was not done for it at all, but that it was done for the Grand Trunk Pacific Railway Company, and that the Grand Trunk Pacific Railway Company is alone responsible for the payment, and not the defendant company. This you will consider, and determine from the evidence what the fact is about that, and return your verdict on it.

There is a good deal of evidence consisting of letters and documents that have been offered in evidence;—the letters, a number of them passing from Mr. Overmire to his own company,—touching the contract and relations between Poole-Dean Company and the defendant company, and all these you will take into consideration in the consideration of what your verdict shall be in the case. And when you have concluded what that is, you will reduce it to writing and return it into Court.

Gentlemen of the Jury, in this Court, in civil cases as well as in criminal cases, it requires a unanimous concurrence of all the jurors in order that you may return a verdict. So you must agree unanimously upon what your verdict shall be. It is not like the State Court in civil cases, because in the State Court a certain proportion of the jurors may prevail, or find a verdict."

Thereupon defendant excepted to certain matters of law contained in said instructions as given by the Court, which matters at law were comprised in the following part of said instructions, to-wit:

“Now, to these three causes of action, the second, third, and fourth, the defendant interposes a defense to this effect: That ‘said specifications provided, and said contract between plaintiff and defendant was made with the express understanding, that the construction operations on said main buildings and wing of dry dock should at all times be under the full control and management of the Grand Trunk Pacific Railway and its officers and agents.’ And it is further alleged that, ‘It was mutually understood and agreed by and between plaintiff and defendant at the time said contract between plaintiff and defendant was entered into, and said contract between plaintiff and defendant was made with the express understanding, that the pontoons for the wing of the dry dock should be furnished and provided by Grand Trunk Pacific Railway and not by defendant, and said pontoons are the pontoons mentioned in plaintiff’s said amended complaint; and it was mutually understood and agreed by and between plaintiff and defendant at the time said contract between plaintiff and defendant was entered into, and said contract between plaintiff and defendant was made with the express understanding, that space for storing, assorting, and handling said steel on the dock of Grand Trunk Pacific Railway at Prince

Rupert, British Columbia, should be furnished and provided by Grand Trunk Pacific Railway, and not by defendant.'

So the defense, then, to these three causes of action is based upon the alleged fact that the plaintiff, and that it was so understood by and between the plaintiff and defendant, should look to the Grand Trunk Pacific Railway Company for these rights and privileges, and that it was not to look to the defendant company; that is to say, that the plaintiff was to look to the Grand Trunk Pacific Railway Company for the furnishing of this space that is complained about, and for the time of the beginning of the work, and for the other things that are alleged in these three causes of action, and not to the defendant company. This, of course, is based upon the fact that the Grand Trunk Pacific Railway Company was making these improvements, and that the contract of the defendant company was made with the Grand Trunk Pacific Railway Company to furnish the materials and to erect the steel in the buildings.

And I might say this, in this relation, however: That if it had been the defendant company who was erecting this steel into the buildings, it might be inquired whether or not it was not the duty of the Grand Trunk Pacific Railway Company to furnish adequate space for handling the steel. If that was the case, then the inquiry may be extended—a sub-contract having been let to the plaintiff company to erect this steel and put it into the buildings,

whether or not the defendant company did not assume the obligation that would have rested upon the Grand Trunk Pacific Railway Company in the first instance of providing adequate space for the carrying on of the work in riveting this steel and in putting it into the buildings. I submit that, gentlemen of the jury, for your consideration, along with the alleged contract and the denials thereof, for determination as to whose duty it was to furnish space—whether or not that was a duty devolving upon the defendant company, or whether or not the plaintiff was to look to the Railway Company alone for furnishing that space, and not to the defendant.”

Thereupon defendant's said exception to said matters at law contained in the instructions given by the Court was allowed.

Thereupon the case was argued by counsel for the respective parties, and submitted to the jury under the instructions of the Court.

WHEREUPON the Court now being willing to preserve the record in order that its rulings and each of them may be reviewed for error, if any there be, now certifies that the foregoing Bill of Exceptions contains all of the evidence offered or admitted on the trial, together with the rulings of the Court and all of the instructions given by the Court, as well as all of the instructions requested by the defendant, and the following exhibits :

Plaintiff's Exhibits "B", "C", "D", "E", "F", "N", "O", "P", "Q" and "R", and Defendant's Exhibits 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 23, 24, A-21, A-22, 20, "A", "B" and "C", and that the same conforms to the facts.

WHEREUPON this Bill of Exceptions is now here settled, certified and signed this 9th day of January, 1917, and the same is hereby directed to be filed.

CHAS. S. WOLVERTON,
District Judge.

Filed January 9, 1917. G. H. Marsh, Clerk.

AND AFTERWARDS, to-wit, on the 12th day of January, 1917, there was duly filed in said Court, a Stipulation, in words and figures as follows, to-wit:

*In the District Court of the United States
for the District of Oregon.*

Stipulation

It is hereby stipulated by and between the parties hereto by their respective attorneys that the transcript of record prepared herein, containing citation on writ of error, writ of error, amended complaint, answer, reply, verdict, judgment, motion for a new trial, order denying motion for new trial, petition for writ of error, order allowing writ of error, staying proceedings, and fixing amount of bond, supersedeas bond, assignment of errors, and bill of exceptions as prepared by counsel for defendant and plaintiff in error herein, is correct, and that the Clerk of the District Court of the United States for the District of Oregon may certify to the correctness thereof without comparing the same, or any part thereof, with the original pleadings and records on file in his office in the above entitled Court.

E. L. McDOUGAL,

Attorney for Plaintiff and Defendant in Error.

TEAL, MINOR & WINFREE,

ROGERS MAC VEAGH,

Attorneys for Defendant and Plaintiff in Error.

Filed January 12, 1917. G. H. Marsh, Clerk.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, pursuant to the foregoing Writ of Error and in obedience thereto, and in accordance with the stipulation signed and filed on the 12th day of January, 1917, by the plaintiff in error and the defendant in error, by their respective attorneys, do hereby certify that I have not compared the foregoing printed Transcript of Record with the original thereof in the case in said Court of Poole-Dean Company, a corporation, plaintiff and defendant in error, against United States Steel Products Company, a corporation, defendant and plaintiff in error, but that the same is a full, true, and correct Transcript of the record and proceedings (without comparison) in said Court in said cause, as the same appear of record and on file at my office and in my custody.

In testimony whereof, I have here-
unto set my hand and the seal of
the above entitled Court this
.....6th day of February, 1917.

G. H. MARSH,
Clerk.

[SEAL]

I hereby certify, that the within is a full, true, and correct copy (and the whole thereof) of the original Transcript of Record in the above entitled cause.

Rogers MacVeagh

of Attorneys for Defendant
and Plaintiff in Error.

